



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

Author and Title

Utah (Ter). Laws, statutes, etc.
Acts, resolutions, and memorials.

Call Number	Volume	Copy
KFU 25 A222	1870	

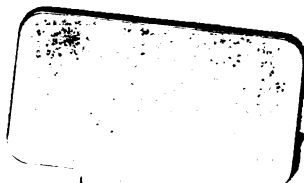
**THIS BOOK DOES NOT CIRCULATE
OUTSIDE THE BUILDING**

NAME	LOCATION

Utah (Ter). Laws, statutes, etc.
Acts, resolutions, and memorials.

KFU
25
A222

vol
1870



ES

F

Utah (Terr.) Laws, statutes, etc.
ACTS,

RESOLUTIONS AND MEMORIALS,

PASSED AND ADOPTED DURING THE

NINETEENTH ANNUAL SESSION

OF THE

LEGISLATIVE ASSEMBLY

OF THE

TERRITORY OF UTAH.

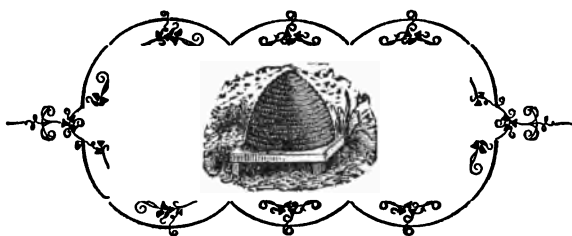
SALT LAKE CITY:

JOSEPH BULL, PUBLIC PRINTER.

1870.

NC

KFU
25
A222
1870



6-150H

ACTS, RESOLUTIONS AND MEMORIALS

OF THE

TERRITORY OF UTAH,

PASSED AT THE

NINETEENTH ANNUAL SESSION OF THE LEGISLATURE, 1870.

AN ACT

For the Relief of the Public Printer for the Eighteenth Annual Session.

[Approved January 28, 1870.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Utah: That the sum of four thousand, eight hundred and forty-three dollars and fifty cents is hereby appropriated out of any money in the Treasury, not otherwise appropriated, for the relief of the Public Printer for the Eighteenth Annual Session, he undertaking to reimburse the Territory in whole or in part as the General Government shall pay the Printer's bills for that Session.

Relief of the
Public Printer

AN ACT

Incorporating Hyrum City, in Cache County.

[Approved February 10, 1870.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that district of country embraced within the following boundaries, to wit: Commencing at the southeast corner of block fourteen, in Hyrum City plot, thence east one and one half miles, thence south one and one half miles, thence west three miles, thence north three miles, thence east three miles, thence south one

Boundaries.

Name and
style.

and one half miles to the parallel line of the place of beginning shall be known and designated under the name of Hyrum City, and the inhabitants thereof are hereby constituted a body corporate and politic by the name aforesaid, and shall have succession, and may have and use a common seal which they may change and alter at pleasure.

Seal.

Powers.

SEC. 2. The inhabitants of said city by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity and in all actions whatsoever; to purchase, receive and hold property, real and personal, in said city; to purchase, receive and hold real property beyond the city for burying grounds or other public purposes for the use of the inhabitants of said city; to sell, lease, convey or dispose of property, real and personal, for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto as natural persons.

City Council.

SEC. 3. There shall be a City Council, to consist of a Mayor and six Councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years and until their successors shall be elected and qualified. The City Council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business; but a smaller number may adjourn from day to day and compel the attendance of absent members under such penalties as may be prescribed by ordinance; there shall also be elected in like manner, two Justices of the Peace, who shall have the qualifications of voters, be commissioned by the Governor, and have jurisdiction in all cases arising under the ordinances of the city.

Oath.

SEC. 4. The Mayor and Councilors, before entering upon the duties of their offices, shall take and subscribe an oath or affirmation that they will support the Constitution of the United States and the laws of this Territory, and that they will well and truly perform all the duties of their offices to the best of their skill and abilities.

Election.

SEC. 5. A Mayor and six Councilors shall be elected biennially, and the first election under this Act shall be at such times in said city as the Probate Judge of Cache County shall direct: *provided*, said election shall be on or before the first Monday in August next. Said election shall be held and conducted as now is provided by law for the holding of elections for County and Territorial officers; and at the said first election all electors within said city limits shall be entitled to vote.

How conducted.

Notifications.

SEC. 6. The clerks of election shall leave with each person elected, or at his usual place of residence, within five days after the election, a written notice of his election; and each person so notified shall, within ten days after the election, take the oath or affirmation hereinbefore mentioned, a certificate of which oath shall be deposited with the Recorder, whose appointment is hereinafter provided for, and be by him

preserved; and all subsequent elections shall be held, conducted and returns thereof made, as may be provided for by ordinance of the City Council.

SEC. 7. The City Council shall have power to levy and collect taxes for city purposes upon all taxable property, real and personal, within the limits of the city, not exceeding one half of one per cent. per annum, upon the assessed value thereof; and may enforce the payment of the same, to be provided for by ordinance not repugnant to the Constitution of the United States or the laws of this Territory. Taxes.

SEC. 8. The City Council shall have power to appoint a Recorder, Treasurer, Assessor and Collector, Marshal and Supervisor of Streets. They shall also have the power to appoint all such other officers, by ordinance, as may be necessary, define the duties of all city officers and remove them from office at pleasure. City Officers.

SEC. 9. The City Council shall have power to require of all officers appointed in pursuance of this Act, bonds with security for the faithful performance of their respective duties, and also to require of all officers appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices. Bond.

SEC. 10. The City Council shall have power and authority to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the laws of this Territory, as they may deem necessary for the peace, benefit, good order, regulation, convenience, and cleanliness of said city; for the protection of property therein from destruction by fire or otherwise, and for the health and happiness of the inhabitants thereof; and shall have control of the water and water courses leading to the city; *provided*, that such control shall not be exercised to the injury of any rights already acquired by actual settlers thereon, and shall have control of the water courses and mill privileges within said city; but in no case shall they interfere with the natural rights of others heretofore acquired in relation to water. They shall have power to fill all vacancies that may happen by death, resignation, removal or otherwise, of any of the officers herein made elective; to fix and establish the fees of the officers of said Corporation. The City Council shall have power to divide the city into wards and specify the boundaries thereof. Ordinances.

SEC. 11. All ordinances passed by the City Council shall, within ten days after they shall have been passed, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in the city. They shall not be in force until thus published or posted up. Vacancies.

SEC. 12. All ordinances of the city may be proven by the seal of the Corporation affixed thereto; and, when printed or published in book or pamphlet form, purporting to be printed or published by the authority of the Corporation, the same shall be received in evidence in all courts and places without further proof. Publication.

SEC. 13. All ordinances of the city may be proven by the seal of the Corporation affixed thereto; and, when printed or published in book or pamphlet form, purporting to be printed or published by the authority of the Corporation, the same shall be received in evidence in all courts and places without further proof. Proof.

Justices of
the Peace.

SEC. 13. The Justices of the Peace of said city shall have all the powers of other Justices of the Peace, both in civil and criminal cases, arising under the laws of the Territory. They shall perform the same duties, be governed by the same laws and give the same bonds and securities as other Justices of the Peace. They shall have exclusive original jurisdiction in all cases arising under the ordinances of the Corporation, and shall issue such process as may be necessary to carry such ordinances into execution. Appeals may be had from any decision or judgment of said Justices arising under the ordinances of said city, or the laws of the Territory, to the Probate Court of said Cache County; in the same manner as appeals are or may be taken from other Justices of the Peace.

Jurisdiction.

Appeals.

Power and
duty of Mayor.

SEC. 14. The Mayor shall be the Chief Executive Officer of said Corporation; he shall preside in the City Council, and shall have power to veto any ordinance when not passed by two-thirds majority, and it shall be his duty to sign all city ordinances.

General
powers.

SEC. 15. The City Council shall have power to restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats, and all kinds of poultry; and to tax and regulate the keeping of dogs, and to authorize the destruction of the same, when at large contrary to city ordinance.

To license, &c.

SEC. 16. To license, regulate, prohibit or restrain the manufacturing, selling or giving away of spirituous, vinous or fermented liquors; to tax and regulate tavern keepers, dram or tippling-shop keepers, victualing or coffee houses, restaurants, saloons, or other houses or places for the selling or giving away of ardent, vinous or fermented liquors.

Exclusive
power by
Ordinance.

SEC. 17. The City Council shall have exclusive power, by ordinance, to regulate the police of the city; to license, tax and regulate auctioneers, merchants and retailers: to license, tax and regulate theatrical and other exhibitions, shows and amusements; to prohibit and suppress gaming, bawdy and other disorderly houses.

SEC. 18. This Act shall be in force on and after the first day of April, one thousand eight hundred and seventy, and may be amended at the pleasure of the Legislative Assembly.

AN ACT

Incorporating Spring City, in Sanpete County.

[Approved February 11, 1870.]

Boundary.

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That, all that portion of Sanpete County embraced in the following boundaries, to wit: Beginning at Cedar Creek Bridge, on the County Road, between Mount Pleasant City and Springtown, thence along the south

line of Mount Pleasant City boundary, to the southeast corner of said City Corporation, thence in a southwesterly direction to the southeast corner of Springtown Precinct, thence westerly to the south line of Springtown Meadow Survey, thence along said line to Sanpitch River, thence up the center of said river three-fourths of a mile, thence east to the dugway, on the County Road, between Ephraim City and Moroni City, thence northerly to the southeast corner of Moroni City Corporation, thence northeasterly to the south line of Mount Pleasant City boundary, one and a fourth miles west of Cedar Creek Bridge, thence east along said line to the place of beginning, be known and designated under the name and style of Spring City; and the inhabitants thereof are hereby constituted a Body Corporate and Politic, by the name and style aforesaid and may have and use a common seal, which they may change and alter at pleasure.

Name and
style.

SEC. 2. The inhabitants of said city by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity, and in all actions whatsoever; to purchase, receive and hold property, real and personal in said city; to purchase, receive and hold real property beyond the city for burying grounds or other public purposes for the use of the inhabitants of said city; to sell, lease, convey or dispose of property, real and personal for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto as natural persons.

Powers.

SEC. 3. There shall be a City Council, to consist of a Mayor and six Councilors, who shall have the qualifications of Electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years and until their successors shall be elected and qualified. The City Council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business; but a smaller number may adjourn from day to day, and compel the attendance of absent members under such penalties as may be prescribed by ordinance; there shall also in like manner be elected, two Justices of the Peace, who shall have the qualifications of voters, be commissioned by the Governor, and have jurisdiction in all cases arising under the ordinances of the city.

City Council.

Justices of the
Peace.

SEC. 4. The Mayor and Councilors before entering upon the duties of their offices, shall take and subscribe an oath or affirmation that they will support the Constitution of the United States, and the Laws of this Territory, and that they will well and truly perform all the duties of their offices to the best of their skill and abilities.

Oath.

SEC. 5. A Mayor, six Councilors and two Justices of the Peace, shall be elected biennially, and the first election under this Act shall be at such time and place in said city, as the Probate Judge of Sanpete County shall direct: *provided*, said election shall be on or before the first Monday in August, next. Said election shall be held and conducted as is now provided

Election.

How conducted.

by law for the holding of elections for County and Territorial Officers; and at the said first election, all electors residing within said city limits shall be entitled to vote.

Notifications. SEC. 6. The Clerks of election shall leave with each person elected, or at his usual place of residence, within five days after the election, a written notice of his election, and each person so notified, shall, within ten days after the election, take the oath or affirmation hereinbefore mentioned, a certificate of which oath shall be deposited with the Recorder, whose appointment is hereinafter provided for, and be by him preserved; and all subsequent elections shall be held, conducted, and returns thereof made as may be provided for by ordinance of the City Council.

Taxes. SEC. 7. The City Council shall have authority to levy and collect taxes for city purposes upon all taxable property, real and personal, within the limits of the city, not exceeding one half of one per cent. per annum upon the assessed value thereof, and may enforce the payment of the same in any manner, to be provided for by ordinance, not repugnant to the Constitution of the United States, or the Laws of this Territory.

City Officers. SEC. 8. The City Council shall have power to appoint a Recorder, Treasurer, Assessor and Collector, Marshal and Supervisor of Streets, and all other officers, by ordinance, as may be necessary; define the duties of all City Officers, and remove them from office at pleasure.

Bond. SEC. 9. The City Council shall have power to require of all officers appointed in pursuance of this Act, bonds with security, for the faithful performance of their respective duties; and also to require of all officers appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices.

Ordinances. SEC. 10. The City Council shall have power and authority, to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the Laws of this Territory, as they may deem necessary for the peace, good order, benefit, regulation, convenience and cleanliness of said city, for the protection of property therein from destruction by fire or otherwise, and for the health and happiness of the inhabitants thereof; and shall have control of the water and water courses leading to the city: *provided*, that such control shall not be exercised to the injury of any rights already acquired by actual settlers thereon, or any rights granted in this Charter; and shall have control of the water courses and mill privileges within said city, but in no case shall they interfere with the natural rights of others, acquired in relation to water privileges within said city. They shall have power to fill all vacancies that may happen by death, resignation, removal or otherwise in any of the offices herein made elective; to fix and establish the fees of the officers of said Corporation, to impose such fines not exceeding one hundred dollars, and imprisonment, not exceeding six months for each offence, for the breach or violation of any city ordinance; to divide the city into wards, and specify the boundaries thereof.

Vacancies.

Publication.

SEC. 11. All ordinances passed by the City Council, shall, within ten days after their passage, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in the city. They shall not be in force until thus published or posted up.

SEC. 12. All ordinances of the city may be proven by the Seal of the Corporation, and when printed or published in book or pamphlet form, purporting to be printed or published by the authority of the Corporation, the same shall be received in evidence in all courts and places without further proof.

SEC. 13. The Justices of the Peace of said city shall have all the powers of other Justices of the Peace, both in civil and criminal cases arising under the Laws of the Territory. They shall perform the same duties, be governed by the same laws, give the same bonds and securities as other Justices of the Peace. They shall have exclusive original jurisdiction in all cases arising under the ordinances of the Corporation, and shall issue such process as may be necessary to carry such ordinances into execution. Appeals may be had from any decision or Judgment of said Justices arising under the ordinances of said city, or the Laws of this Territory to the Probate Court of Sanpete County, in the same manner as appeals are or may be taken from other Justices of the Peace.

SEC. 14. The Mayor shall be the Chief Executive Officer of said Corporation. He shall preside in the City Council, and shall have power to veto any ordinances, but when passed by two-thirds majority after considering his objections, it shall be his duty to sign all such ordinances: *provided*, that in the absence of the Mayor at any meeting of the Council, the Council shall have power to appoint one of their number to preside.

SEC. 15. The City Council shall have power to restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats, and all kinds of poultry; and to tax and regulate the keeping of dogs, and to authorize the destruction of the same when at large contrary to city ordinance.

SEC. 16. To prohibit or restrain the manufacturing, selling or giving away of spirituous vinous or fermented liquors, to tax and regulate hotel keepers, victualing or coffee houses, restaurants, saloons, or other houses or places of entertainment.

SEC. 17. The City Council shall have exclusive power by ordinance to regulate the police of the city, to license, tax and regulate auctioneers, merchants, retailers, theatricals, and other exhibitions, shows and amusements; to prohibit and suppress gaming; to prohibit and suppress bawdy and other disorderly houses.

SEC. 18. To make regulations to prevent the introduction of contagious diseases into the city, to make quarantine laws and enforce the same within the city.

SEC. 19. To establish hospitals and make regulations for the government of the same. To make regulations to secure

the general health of the inhabitants, to declare what shall be nuisances and prevent and remove the same.

SEC. 20. This Act shall be in force on and after the first Monday in April, eighteen hundred and seventy, and may be amended at the pleasure of the Legislative Assembly.

—o—

AN ACT

Conferring upon Women the Elective Franchise.

[Approved February 12, 1870.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That every woman of the age of twenty-one years who has resided in this Territory six months next preceding any general or special election, born or naturalized in the United States, or who is the wife, widow or the daughter of a native-born or naturalized citizen of the United States, shall be entitled to vote at any election in this Territory.

SEC. 2. All laws or parts of laws conflicting with this Act are hereby repealed.

—o—

AN ACT

Incorporating Mendon City, in Cache County.

[Approved February 12, 1870.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that district of country in Cache County embraced within the following boundaries, to wit: Beginning at a point one and one half miles east of the southeast corner of block five in Mendon town plot, thence south one and one half miles, thence west three miles, thence north three miles, thence east three miles, thence south one and one half miles to the place of beginning, shall be known and designated under the name of Mendon City, and the inhabitants thereof are hereby constituted a body corporate and politic by the name aforesaid, and shall have succession, and may have and use a common seal which they may change and alter at pleasure.

SEC. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity and in all actions whatsoever; to purchase, receive and hold property, real and personal, in said city; to purchase, receive and hold real property beyond the city for burying grounds or other public purposes for the use of the

Female
suffrage.

Boundary.

Name and
style.

Powers.

inhabitants of said city: to sell, lease, convey or dispose of property, real and personal, for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto as natural persons.

SEC. 3. There shall be a City Council, to consist of a Mayor and six Councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years and until their successors shall be elected and qualified. The City Council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business; but a less number may adjourn from day to day and compel the attendance of absent members under such penalties as may be prescribed by ordinance; there shall also be elected in like manner two Justices of the Peace, who shall have the qualifications of voters, be commissioned by the Governor, and have jurisdiction in all cases arising under the ordinances of the city. City Council.

SEC. 4. The Mayor and Councilors, before entering upon the duties of their offices, shall take and subscribe an oath or affirmation that they will support the Constitution of the United States and the laws of this Territory, and that they will well and truly perform all the duties of their offices to the best of their skill and abilities. Oath.

SEC. 5. A Mayor and six Councilors shall be elected biennially, and the first election under this Act shall be at such time in said city as the Probate Judge of Cache County shall direct: *provided*, said election shall be on or before the first Monday in August next. Said election shall be held and conducted as now is provided by law for the holding of elections for County and Territorial officers; and at the said first election, all electors within said city limits shall be entitled to vote. Election.

SEC. 6. The Clerks of election shall leave with each person elected, or at his usual place of residence, within five days after the election, a written notice of his election, and each person so notified shall, within ten days after the election, take the oath or affirmation hereinbefore mentioned, a certificate of which oath shall be deposited with the Recorder, whose appointment is hereinafter provided for, and be by him preserved; and all subsequent elections shall be held, conducted and returns thereof made as may be provided for by ordinance of the City Council. How conducted.

SEC. 7. The City Council shall have power to levy and collect taxes for city purposes upon all taxable property, real and personal, within the limits of the city, not exceeding one half of one per cent. per annum upon the assessed value thereof, and may enforce the payment of the same, to be provided for by ordinance not repugnant to the Constitution of the United States or the laws of this Territory. Notifications.

SEC. 8. The City Council shall have power to appoint a Recorder, Treasurer, Assessor and Collector, Marshal and Supervisor of Streets, and appoint all such other officers by Taxes.

City Officers.

ordinance as may be necessary, define the duties of all city officers and remove them from office at pleasure.

Bond.

SEC. 9. The City Council shall have power to require of all officers appointed in pursuance of this Act, bonds with security for the faithful performance of their respective duties; and also to require of all officers appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices.

Ordinances.

SEC. 10. The City Council shall have power and authority to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the laws of this Territory, as they may deem necessary for the peace, benefit, good order, regulation, convenience and cleanliness of said city; for the protection of property therein from destruction by fire or otherwise, and for the health and happiness of the inhabitants thereof; and shall have control of the water and water courses leading to the city: *provided*, that such control shall not be exercised to the injury of any rights already acquired by actual settlers thereon; and shall have control of the water courses and mill privileges within said city; but in no case shall they interfere with the natural rights of others heretofore acquired in relation to water. They shall have power to fill all vacancies that may happen by death, resignation, removal or otherwise, of any of the officers herein made elective; to fix and establish the fees of the officers of said Corporation. The City Council shall have power to divide the city into wards and specify the boundaries thereof.

Vacancies.

Publication.

SEC. 11. All ordinances passed by the City Council shall, within ten days after they shall have been passed, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in the city. They shall not be in force until thus published or posted up.

Proof.

SEC. 12. All ordinances of the city may be proven by the seal of the Corporation affixed thereto; and, when printed or published in book or pamphlet form, purporting to be printed or published by the authority of the Corporation, the same shall be received in evidence in all courts and places without further proof.

Justices of the Peace.

SEC. 13. The Justices of the Peace of said city shall have all the powers of other Justices of the Peace, both in civil and criminal cases, arising under the laws of the Territory. They shall perform the same duties, be governed by the same laws, and give the same bonds and securities as other Justices of the Peace. They shall have exclusive original jurisdiction in all cases arising under the ordinances of the Corporation, and shall issue such process as may be necessary to carry such ordinances into execution. Appeals may be had from any decision or judgment of said Justices, arising under the ordinances of said city or the laws of the Territory, to the Probate Court of said Cache County, in the same manner as appeals are or may be taken from other Justices of the Peace.

Jurisdiction.

Appeals.

Power and duty of Mayor.

SEC. 14. The Mayor shall be the Chief Executive Officer

of said Corporation; he shall preside in the City Council, and shall have power to veto any ordinance, but when passed by two-thirds majority after considering his objections, it shall be his duty to sign the same as well as all other city ordinances.

SEC. 15. The City Council shall have power to restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats, and all kinds of poultry; and to tax and regulate the keeping of dogs, and to authorize the destruction of the same when at large contrary to city ordinance. General powers.

SEC. 16. To license, regulate, prohibit or restrain the manufacturing, selling or giving away of spirituous, vinous or fermented liquors to tax and regulate tavern keepers, dram or tippling-shop keepers, victualing or coffee houses, restaurants, saloons or other houses or places for the selling or giving away of ardent, vinous or fermented liquors. To license, &c.

SEC. 17. The City Council shall have exclusive power, by ordinance, to regulate the police of the city; to license, tax and regulate auctioneers, merchants and retailers; to license, tax and regulate theatrical and other exhibitions, shows, and amusements; to prohibit and suppress gaming, bawdy and other disorderly houses. Exclusive power by ordinance.

SEC. 18. This Act shall be in force on and after the first day of April, one thousand eight hundred and seventy, and may be amended at the pleasure of the Legislative Assembly.

AN ACT

Amending "An Act, Prescribing the Manner of Assessing and Collecting Territorial and County Taxes, and for other purposes," Approved January 20, 1865.

[Approved February 15, 1870.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That Section Three of "An Act prescribing the manner of assessing and collecting Territorial and County Taxes, and for other purposes," Approved January 20, 1865, be amended to read, one fourth of one per cent, in the first line of said Section, and to read, three fourths of one per cent, in the third line of said Section. Amendments.

SEC. 2. This Act shall be in force from and after its passage.

AN ACT

To provide for the Election of the Members of the Legislative Assembly of the Territory of Utah.

[Approved February 15, 1870.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the term of the Members of the House of Representatives of the Territory

Biennial
election.

of Utah, to be elected at the general election on the first Monday in August, eighteen hundred and seventy, shall be two years, and their election shall be biennially thereafter.

Biennial
election.

SEC. 2. That the term of the members of the Council of the Legislative Assembly of the Territory of Utah to be elected at the general election on the first Monday in August, eighteen hundred and seventy-one, shall be two years, and their election shall be biennially thereafter.

Repealing
clause.

SEC. 3. That so much of Section one of an Act entitled "An Act apportioning the representation of Utah Territory," approved Jan. 17, 1862, as conflicts with this Act, is hereby repealed.

—o—

AN ACT

Incorporating Willard City, in Box Elder County.

[Approved February 18, 1870.]

Boundary.

Name and
style.

Seal.

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that district of country embraced in the following boundaries in Box Elder County, to wit: Commencing at the southwest corner of Section thirty-five, Township eight north, range two west, thence west one mile, thence north three miles, thence east two miles, thence south three miles, thence west one mile to place of beginning, shall be known and designated under the name and style of Willard City; and the inhabitants thereof are hereby constituted a body corporate and politic by the name aforesaid, and shall have perpetual succession, and may have and use a common seal, which they may change and alter at pleasure.

Powers.

SEC. 2. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity and in all actions whatsoever; to purchase, receive and hold property, real and personal, in said city; to purchase, receive and hold real property beyond the city for burying grounds or other public purposes for the use of the inhabitants of said city; to sell, lease, convey or dispose of property, real and personal, for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto as natural persons.

City Council.

SEC. 3. There shall be a City Council, to consist of a Mayor and five Councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years and until their successors shall be elected and qualified. The City Council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a

quorum to do business; but a smaller number may adjourn from day to day and compel the attendance of absent members under such penalties as may be prescribed by ordinance; there shall also be elected in like manner two Justices of the Peace, who shall have the qualifications of voters, be commissioned by the Governor, and have jurisdiction in all cases arising under the ordinances of the city.

SEC. 4. The Mayor and Councilors, before entering upon the duties of their offices, shall take and subscribe an oath or affirmation that they will support the Constitution of the United States and the laws of this Territory, and that they will well and truly perform all the duties of their offices to the best of their skill and abilities. Oath.

SEC. 5. A Mayor and five Councilors shall be elected biennially, and the first election under this Act shall be at such time and place in said city as the Probate Judge of Box Elder County shall direct: *provided*, said election shall be on or before the first Monday in August next. Said election shall be held and conducted as now is provided by law for the holding of elections for County and Territorial officers; and, at the said first election, all electors within said city limits shall be entitled to vote. Election.
How conducted.

SEC. 6. The Clerk of election shall leave with each person elected, or at his usual place of residence, within five days after the election a written notice of his election, and each person so notified shall, within ten days after the election, take the oath or affirmation hereinbefore mentioned, a certificate of which oath shall be deposited with the Recorder, whose appointment is hereinafter provided for, and be by him preserved; and all subsequent elections shall be held, conducted and returns thereof made, as may be provided for by ordinance of the City Council. Notification.

SEC. 7. The City Council shall have authority to levy and collect taxes for city purposes, upon all taxable property, real and personal, within the limits of the city, not exceeding one half of one per cent. per annum upon the assessed value thereof, and may enforce the payment of the same to be provided for by ordinance not repugnant to the Constitution of the United States or to the laws of this Territory. Taxes.

SEC. 8. The City Council shall have power to appoint a Recorder, Treasurer, Assessor and Collector, Marshal and Supervisor of Streets, and to appoint all such other officers, by ordinance, as may be necessary, define the duties of all city officers and remove them from office at pleasure. City Officers.

SEC. 9. The City Council shall have power to require of all officers appointed in pursuance of this Act, bonds with security for the faithful performance of their respective duties, and also to require of all officers appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices. Bond.

SEC. 10. The City Council shall have power and authority to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the laws Ordinances.

of this Territory, as they may deem necessary for the peace, benefit, good order, regulation, convenience and cleanliness of said city; for the protection of property therein from destruction by fire or otherwise, and for the health and happiness of the inhabitants thereof; and shall have control of the water and water courses leading to the city: *provided*, that such control shall not be exercised to the injury of any rights already acquired by actual settlers thereon; and shall have control of the water courses and mill privileges within said city; but in no case shall they interfere with the natural rights of others heretofore acquired in relation to water. They shall have power to fill all vacancies that may happen by death, resignation, removal or otherwise, of any of the officers herein made elective; to fix and establish the fees of the officers of said Corporation. The City Council shall have power to divide the city into wards and specify the boundaries thereof.

Vacancies.

Publication.

Sec. 11. All ordinances passed by the City Council shall, within ten days after they shall have been passed, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in the city. They shall not be in force until thus published or posted up.

Proof.

Sec. 12. All ordinances of the city may be proven by the seal of the Corporation affixed thereto; and, when printed or published in book or pamphlet form, purporting to be printed or published by the authority of the Corporation, the same shall be received in evidence in all courts and places without further proof.

Justices of the Peace.

Sec. 13. The Justices of the Peace of said city shall have all the powers of other Justices of the Peace, both in civil and criminal cases, arising under the laws of the Territory. They shall perform the same duties, be governed by the same laws, and give the same bonds and securities as other Justices of the Peace. They shall have exclusive original jurisdiction in all cases arising under the ordinances of the Corporation, and shall issue such process as may be necessary to carry such ordinances into execution. Appeals may be had from any decision or judgment of said Justices arising under the ordinances of said city, or the laws of the Territory, to the Probate Court of said Box Elder County in the same manner as appeals are or may be taken from other Justices of the Peace.

Jurisdiction.

Appeals.

Power and duty of Mayor.

Sec. 14. The Mayor shall be the Chief Executive Officer of said Corporation; he shall preside in the City Council, and shall have power to veto any ordinance when not passed by four-fifths majority, and it shall be his duty to sign all city ordinances.

General powers.

Sec. 15. The City Council shall have power to restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats, and all kinds of poultry; and to tax and regulate the keeping of dogs and to authorize the destruction of the same when at large contrary to city ordinance.

Sec. 16. To license, regulate, prohibit or restrain the manufacturing, selling or giving away of any spirituous,

vinous or fermented liquors; to tax and regulate tavern keepers, dram or tippling-shop keepers, victualing or coffee houses, restaurants, saloons or other houses or places for the selling or giving away of ardent, vinous or fermented liquors. To license, &c.

SEC. 17. The City Council shall have exclusive power, by ordinance, to regulate the police of the city; to license, tax and regulate auctioneers, merchants and retailers; to license, tax and regulate theatrical and other exhibitions, shows and amusements; to prohibit and suppress gaming, bawdy and other disorderly houses. Exclusive power by ordinance.

SEC. 18. This Act shall be in force on and after the first day of April, one thousand eight hundred and seventy, and may be amended or altered at the pleasure of the Legislative Assembly.

—○—

AN ACT

Authorizing certain Officers to appoint Deputies.

[Approved February 16, 1870.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the Clerks of the various Courts, and County Recorders of this Territory are hereby authorized to appoint Deputies, for whose acts they shall be responsible. Who shall appoint deputies.

SEC. 2. Said Deputies shall have power to perform all the acts and duties which the principals have right to perform in their official capacities, and to demand and receive the same fees as the principals for so doing. Duties and fees.

SEC. 3. This act shall be in force from and after its passage.

—○—

AN ACT

Further defining the duties of Territorial and County Officers or Agents.

[Approved February 17, 1870.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the Territorial Treasurer, Road Commissioner, Surveyor General, Recorder of Marks and Brands, Superintendent of Salt Lake City and Wanship Wagon Road, Warden of the Penitentiary and all other Territorial officers or agents having the care, custody, purchase or expenditure of any money or public property shall, on or before the first day of December in each year, Certain officers or agents to report to Auditor of Public Accounts.

report to the Auditor of Public Accounts an accurate invoice of the property on hand, with accompanying vouchers, for the property purchased during the year. They shall also submit an invoice and proper vouchers for money and property paid out during each year ending November thirtieth.

Auditor to examine reports, and submit the same to the Legislative Assembly.

SEC. 2. The Auditor shall carefully examine all such reports and vouchers, and see that the property is suitably cared for, and the money judiciously expended, according to law and the design of the appropriation; and for this purpose he is hereby authorized to administer an oath to any person he may wish to have testify in the premises. He shall make a condensed report of the several reports herein contemplated, and submit the same to the Legislative Assembly during the first week of its regular session, with such recommendations or suggestions as he may think proper, for the consideration of the Assembly.

Auditor to report to the Territorial Treasurer.

SEC. 3. The Auditor shall make a report to the Territorial Treasurer of the property in his care, as is contemplated for other officers to report to him as provided for in Section one of this Act.

Treasurer to report to the Assembly.

SEC. 4. The Treasurer shall make a report to the Legislative Assembly and be governed in the discharge of his duties as is contemplated for the Auditor in Section two of this Act.

County officers or agents, to report to the County Clerks

SEC. 5. All County officers or agents having the care or disposal of county money or other property, shall make a report to the Clerk of the County Court in like manner as is provided for Territorial officers to report to the Auditor in Section one of this Act.

County Clerk to report to the County Treasurer.

SEC. 6. The Clerk of the County Court shall be governed in the discharge of his duties as is provided for the Auditor in Section two of this Act; he shall also make a report of the property in his care to the County Treasurer annually, on the first day of December: *provided*, however, said condensed report, referred to in Section two of this Act, shall be made to the County Court at the regular December term, instead of to the Legislative Assembly.

Proceedings against delinquent officers or agents.

SEC. 7. In case any officer or agent, contemplated in this Act, shall neglect to make a report or deposit a receipt as herein required, the officer to whom such report or receipt is returnable, shall notify the proper Prosecuting Attorney of the facts in the case, and it is hereby made the duty of such attorney to proceed against such delinquent officer or agent on his bonds, contract or agreement as soon as practicable. When judgment is rendered and executed, the money received shall be paid by the proper officer into the Territorial Treasury, if from a delinquent Territorial officer or agent; if from a delinquent County officer or agent, it shall be paid to the County Treasurer. Attested copies of receipts for all money paid into either Treasury shall be deposited, if from the Territorial Treasury, with the Auditor of Public Accounts by the first day of January annually; if from the County Treasury, with the Clerk of the County Court, annually on the first day of the session of the December term of said Court.

Where money collected on proceedings, &c., shall be deposited.

SEC. 8. Officers or agents, contemplated in this Act, shall deliver to their successors in office all moneys, books, papers and other property belonging to the office and take a receipt therefor, and when from the Territorial Treasurer deposit an attested copy thereof with the Auditor of Public Accounts; when from the County Treasurer deposit said copy with the Clerk of the County Court, which copies shall be deposited within thirty days from the date of receipt.

Officers or agents to deliver moneys, books, &c., to their successors.

AN ACT

To Regulate Proceedings in Civil Cases in the Courts of Justice of this Territory, and to Repeal certain Acts and Parts of Acts.

TITLE I.

Of the Form of Civil Actions and the Parties thereto.

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That there shall be in this Territory but one form of civil action for the enforcement or protection of private rights, and the redress or prevention of private wrongs.

Only one form of action.

SEC. 2. In such action the party complaining shall be known as the plaintiff, and the adverse party as the defendant.

Parties designated.

SEC. 3. When a question of fact, not put in issue by the pleadings, is to be tried by jury, an order for the trial may be made, stating distinctly and plainly the question of fact to be tried; and such order shall be the only authority necessary for a trial.

Question of fact.

SEC. 4. Every action shall be prosecuted in the name of the real party in interest, except as otherwise provided in this Act.

Action in whose name prosecuted.

SEC. 5. In the case of an assignment of a thing in action, the action by the assignee shall be without prejudice to any set-off or other defense, existing at the time of, or before notice of the assignment; but this Section shall not apply to a negotiable promissory note or bill of exchange, transferred in good faith, and upon good consideration, before due.

Set-off when not prejudiced

SEC. 6. An executor, or administrator, or trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the person or persons for whose benefit the action is prosecuted. A trustee of an express trust, within the meaning of this Section, shall be construed to include a person with whom, or in whose name, a contract is made for the benefit of another.

Action by executor.

SEC. 7. When a married woman is a party, her husband shall be joined with her; except that: First—When the action concerns her separate property, she may sue alone. Second—

When married woman is party, exceptions.

When the action is between herself and her husband, she may sue or be sued alone.

Defense by. SEC. 8. If a husband and wife be sued together, the wife may defend for her own right.

Minor, how to appear. SEC. 9. When a minor is a party, he shall appear by guardian, who may be appointed by the Court in which the action is prosecuted, or by a Judge thereof.

Guardian, how appointed. SEC. 10. The guardian shall be appointed as follows: First—When the minor is plaintiff, upon the application of the minor, if he be of the age of fourteen years; or, if under that age, upon the application of a relative or friend of the minor. Second—When the minor is defendant, upon the application of the minor, if he be of the age of fourteen years, and apply within ten days after the service of the summons; if he be under the age of fourteen, or neglect so to apply, then upon the application of any other party to the action, or of a relative or friend of the minor.

Injury to child, &c. SEC. 11. A father, or in case of his death or desertion of his family, the mother, may maintain an action for the injury or death of a child; and a guardian for the injury or death of his ward.

Plaintiff who may be joined. SEC. 12. All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except when otherwise provided in this Act.

Defendant, who may be made. SEC. 13. Any person may be a defendant, who has, or claims, an interest in the controversy, adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein.

Parties, who to be joined. SEC. 14. Of the parties to the action, those who are united in interest shall be joined as plaintiffs, or defendants; but if the consent of any one, who should have been joined as plaintiff, cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the Court, one or more may sue or defend for the benefit of all. Tenants in common, joint tenants, or co-partners, or any number less than all may jointly or severally bring or defend, or continue the prosecution or defense, or any action for the enforcement of the rights of such person or persons.

Separately liable may be joined. SEC. 15. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, and sureties on the same or separate instruments, may all, or any of them, be included in the same action, at the option of the plaintiff.

Death of party or transfer of interest. SEC. 16. An action shall not abate by the death, or other disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death, or disability, of a party, the Court, on motion, may allow the action to be continued by or against his representative or successor in interest. In the case of any other transfer

of interest, the action may be continued in the name of the original party, or the Court may allow the person to whom the transfer is made to be substituted in the action. After verdict shall have been rendered in any action for a wrong, such action shall not abate by the death of any party, but the case shall proceed thereafter in the same manner as in cases where the cause of action now survives by law.

SEC. 17. The Court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the Court shall order them to be brought in, and thereupon the party directed by the Court shall serve a copy of the summons in the action, and the order aforesaid in like manner of service of the original summons, upon each of the parties ordered to be brought in, who shall have ten days, or such time as the Court may order, after service in which to appear and plead; and in case such party fail to appear and plead within the time aforesaid, the Court may cause his default to be entered, and proceed as in other cases of default, or may make such other order as the condition of the action and justice shall require.

Controversy,
where court
to determine.

TITLE II.

Of the Place of Trial of Civil Actions.

SEC. 18. Actions for the following causes shall be tried in the County in which the subject of the action, or some part thereof, is situated, subject to the power of the Court to change the place of trial, as provided in this Act: First—for the recovery of real property, or of an estate, or interest therein, or for the determination in any form of such right or interest, or for injuries to real property. Second—for the partition of real property. Third—For the foreclosure of a mortgage of real property; *provided*, that where such real property is situate partly in one County and partly in another, the plaintiff may select either of said Counties, and the County so selected shall be the proper County for the trial of any or all of such actions as are mentioned in the First, Second and Third subdivisions of this Section.

Where subject
matter is
situated.

Proviso.

SEC. 19. Actions for the following causes shall be tried in the County where the cause, or some part thereof, arose, subject to the like power of the Court to change the place of trial: First—For the recovery of a penalty or forfeiture imposed by statute; except, that when it is imposed for an offence committed on a lake, river or other stream of water, situated in two or more Counties, the action may be brought in any County bordering on such lake, river or stream, and opposite to the place where the offence was committed. Second—Against a public officer, or person specially appointed to execute his duties, for an act done by him in virtue of his

Where cause
of action
arose.

office, or against a person who, by his command or in his aid, does anything touching the duties of such officer.

Where parties
reside.

SEC. 20. In all other cases, the action shall be tried in the County where the cause of action originated, or in which the defendants, or any one of them, may reside at the commencement of the action: or, if none of the defendants reside in the Territory, or if residing in the Territory, the County in which they so reside be unknown to the plaintiff, the same may be tried in any County which the plaintiff may designate in his complaint; and if any defendant, or defendants, may be about to depart from the Territory, such action may be tried in any County where either of the parties may reside, or service be had, subject, however, to the power of the Court to change the place of trial, as provided in this Act.

Changing
place of trial.

SEC. 21. If the County designated for that purpose in the complaint be not the proper County, the action may, notwithstanding, be tried therein, unless the defendant, before the time for answering expire, demand in writing that the trial be had in the proper County, and the place of trial be thereupon changed by consent of parties, or by order of the Court, as is provided in this Section. The Court may, on motion, change the place of trial in the following cases: First—When the County designated in the complaint is not the proper County. Second—When there is reason to believe that an impartial trial cannot be had therein. Third—When convenience of witnesses and the ends of justice would be promoted by the change. Fourth—When from any cause the Judge is disqualified from acting in the case. When the place of trial is changed, all other proceedings shall be had in the County to which the place of trial is changed; unless otherwise provided by consent of the parties in writing duly filed, or by order of the Court; and the papers shall be filed, or transferred accordingly.

TITLE III.

Of the Manner of Commencing Civil Actions.

Civil actions,
how commen-
ced in the
District Court.

SEC. 22. Civil action in the courts shall be commenced by the filing of a complaint with the Clerk of the Court, and the issuance of a summons thereon; *provided*, that after the filing of the complaint a defendant in the action may appear, answer or demur, whether the summons has been issued or not, and such appearance, answer or demurrer, shall be deemed a waiver of the summons.

Complaint,
how endorsed.

SEC. 23. The Clerk shall endorse on the complaint the day, month and year the same is filed, and at any time within one year after filing of the same, the plaintiff may cause to be issued a summons thereon. The summons shall be issued by the Clerk under the seal of the Court.

Form of
Summons.

SEC. 24. The summons shall state the parties to the action, the Court in which it is brought, the County in which the complaint is filed, the cause and general nature of the action, and require the defendant to appear and answer the complaint, within the time mentioned in the next Section,

after the service of summons, exclusive of the day of service; or that judgment by default will be taken against him, according to the prayer of the complaint, briefly stating the sum of money or other relief demanded in the complaint.

SEC. 25. The time in which the summons shall require the defendant to answer the complaint shall be as follows: First—If the defendant is served within the County in which the action is brought, ten days. Second—if the defendant is served out of the County, but in the District in which the action is brought, twenty days. Third—In all other cases, forty days.

Answer, when to be made.

SEC. 26. There shall also be inserted in the summons a notice in substance as follows: First—In an action arising on contract for the recovery only of money or damages, that the plaintiff will take judgment for a sum specified therein, if the defendant fail to answer the complaint. Second—In other actions, that if the defendant fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded therein.

Notice to be inserted in Summons.

SEC. 27. In an action for the foreclosure of a mortgage upon real property, or affecting the title or possession of real property, the plaintiff, at the time of filing the complaint, and the defendant, at the time of filing his answer, when affirmative relief is claimed in such answer, or at any time afterwards, may file with the Recorder of the County in which the property, or some part thereof is situated, a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the property in that County affected thereby, and the defendant may also, in such notice, state the nature and extent of the relief claimed in the answer. From the time of filing, only, shall the pendency of the action be constructive notice to a purchaser, or incumbrancer of the property affected thereby; and in case of the foreclosure of such mortgage all purchasers or incumbrancers, by unrecorded deed or other instrument in writing made prior to the filing of such notice, and subsequent to the date of such mortgage, shall be deemed and held purchasers or incumbrancers subsequent to the filing of such notice, and subject thereto, unless they can show that at the time of filing the notice the plaintiff had actual notice of such purchase or incumbrance.

Notice in action affecting real property.

SEC. 28. The summons shall be served by the Territorial Marshal, or the Sherfff of the County where the defendant is found, and, except as hereinafter provided, a copy of the complaint, certified by the Clerk of the Court in which the action is commenced, shall be served with the summons. When the summons shall be served by the Territorial Marshal, or the Sherfff of the County, it shall be returned with the certificate or affidavit of the officer, of its service, and of the service of the copy of the complaint, to the office of the Clerk of the Court in which the action is commenced. When the summons is served by any other person, as before provided, it shall be returned to the office of the Clerk of the Court in which the action is commenced with the affidavit of such

Summons, by whom served.

person of its service, and of the service of a copy of the complaint. If there be more than one defendant to the action residing within the County in which the action is brought, a copy of the complaint need be served only on one of such defendants.

How served.

SEC. 29. The summons shall be served by delivering a copy thereof attached to the certified copy of the complaint, as follows: First—If the suit be against any incorporated city, service shall be made on the Mayor and Recorder: Second—If the suit be against any County, service shall be made on the Probate Judge and Clerk of the County Court: Third—If the suit be against a school district, service shall be made on the Trustees: Fourth—If the suit be against any irrigating company, service shall be made on the superintendent or water master: Fifth—If the suit be against any other corporate body, incorporated under the laws of the Territory, service shall be made on the President or chief officer, and on its Secretary or Clerk, if it has such secretary or clerk. Where the defendant is a foreign corporation and has an acknowledged agent, in this Territory, service may be made on such agent, or if no such agent is found, on any person in its employ, or who has any of its property in charge: Sixth—If against a minor under the age of fourteen years, on such minor personally, and also on his father, mother or guardian, or if such minor has no such father, mother or guardian in the Territory, then on any person having the care and control of such minor, or with whom he resides, or in whose service he is employed: Seventh—If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, on such guardian: Eighth—In all other cases on the defendant personally, or by leaving a certified copy thereof at his usual place of abode with some suitable person of, at least, the age of fourteen years.

Service by publication.

SEC. 30. When the person on whom the service is to be made resides out of the Territory, or has departed from the Territory, or cannot after due diligence be found within the Territory, or conceals himself to avoid the service of summons, or being a corporation, or joint-stock association, cannot be served as provided in Section Twenty-nine, and the fact shall appear by affidavit to the satisfaction of the Court or Judge thereof, and it shall in like manner appear that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a necessary or proper party to the action, such Court or Judge may grant an order that the service be made by the publication of the summons.

Same.

SEC. 31. The order shall direct the publication to be made in a newspaper to be designated as most likely to give notice to the persons to be served. If any defendant is a non-resident of the Territory, but has an agent therein, service may be made on him by serving the same on his agent, or by leaving a copy thereof at his usual place of business with any person in charge thereof. Where any defendant is a non-

resident, or his residence is unknown, and has no known agent or place of business in this Territory, service may be made by publication in some newspaper printed in and having a general circulation in the Territory, which publication must contain the names of the parties, plaintiff and defendant, to the complaint, a statement of the object thereof, the name and style of the Court in which the same is filed, and also notify the persons thus to be served when they are required to answer. Said publication shall be inserted four times consecutively, the first insertion shall be at least forty days before the time of answer, and a copy of which shall be immediately deposited (post paid) in the Post Office, directed to the defendant or defendants at their last known place of residence or business. In actions upon contracts for the direct payment of money, the Court in its discretion may, instead of ordering publication, or may after publication, appoint an attorney to appear for the non-resident, absent or concealed defendant, to conduct the proceedings on his part.

SEC. 32. Where the action is against two or more defendants, and the summons is served on one or more, but not on all of them, the plaintiff may proceed as follows: First,—If the action be against the defendants jointly indebted upon a contract, he may proceed against the defendant served, unless the Court otherwise direct; and if he recover judgment, it may be entered against all the defendants thus jointly indebted, so far only as that it may be enforced against the joint property of all and the separate property of the defendant served; or, Second—If the action be against defendants severally liable, he may proceed against the defendants served in the same manner as if they were the only defendants.

Proceedings where service is made only on some of several defendants.

SEC. 33. Proof of the service of the summons shall be as follows: First—If served by the Territorial Marshal, or the Sheriff of the County, the affidavit or certificate of such officer; or, Second—In case of publication, the affidavit of the publisher, his foreman or principal clerk, showing the same, and an affidavit of a deposit of a copy of the summons in the Post Office, if the same shall have been deposited; or, Third—the written admission of the defendant.

Proof of service.

SEC. 34. In case of service otherwise than by publication, the certificate or affidavit shall state the time and place of service.

Same.

SEC. 35. From the time of the service of the summons in a civil action, the Court shall be deemed to have acquired jurisdiction, and to have control of all the subsequent proceedings. A voluntary appearance of a defendant shall be equivalent to personal service of the summons upon him.

Jurisdiction.

TITLE IV.

Of the Pleadings in Civil Actions.

SEC. 36. The pleadings are the formal allegations by the Pleadings.

parties of their respective claims and defenses, for the judgment of the Court.

Forms and
rules.

SEC. 37. All the forms of pleadings in civil actions, and the rules by which the sufficiency of the pleadings shall be determined, shall be those prescribed in this Act.

By plaintiff
and defendant

SEC. 38. The only pleadings on the part of the plaintiff shall be the complaint or demurrer to the defendant's answer; and the only pleadings on the part of the defendant shall be the demurrer, or the answer. The demurrer or answer of the defendant, and the demurrer of the plaintiff, shall be filed with the Clerk, and a copy served on the adverse party, or his attorney.

Complaint,
what to
contain.

SEC. 39. The complaint shall contain: First—The title of the action, specifying the name of the Court, and the name of the County in which the action is brought, and the names of the parties to the action, plaintiff and defendant. Second—A statement of the facts constituting the cause of action in ordinary and concise language. Third—A demand of the relief which the plaintiff claims. If the recovery of money or damages be demanded, the amount thereof shall be stated.

Demurrer.

SEC. 40. The defendant may demur to the complaint within the time required in the summons to answer, when it appears upon the face thereof, either: First—That the Court has no jurisdiction of the person of the defendant, or the subject of the action; or, Second—That the plaintiff has not legal capacity to sue; or, Third—that there is another action pending between the same parties for the same cause; or, Fourth—There is a defect or misjoinder of parties, plaintiff or defendant; or, Fifth—That several causes of action have been improperly united; or, Sixth—That the complaint does not state facts sufficient to constitute a cause of action. Seventh—That the complaint is ambiguous, unintelligible or uncertain.

Same.

SEC. 41. The demurrer shall distinctly specify the grounds upon which any of the objections to the complaint are taken. Unless it do so it may be disregarded.

Same.

SEC. 42. The defendant may demur to the whole complaint, or to one or more of several causes of action stated therein, and answer the residue; or may demur and answer at the same time.

Amending
complaint.

SEC. 43. If the complaint be amended, a copy of the amendment shall be filed, or the Court may, in its discretion, require the complaint as amended to be filed, and a copy of the amendments shall be served upon every defendant to be affected thereby, or upon his attorney if he has appeared by attorney. The defendant shall answer in such time as may be ordered by the Court, and judgment by default may be entered upon failure to answer, as in other cases.

Objections.

SEC. 44. When any of the matters enumerated in Section Forty do not appear upon the face of the complaint, the objection may be taken by answer.

Waiver of
objections.

SEC. 45. If no such objection be taken, either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting only the objection to the jurisdiction o

the Court, and the objection that the complaint does not state facts sufficient to constitute a cause of action.

SEC. 46. The answer of the defendant shall contain: First—If the complaint be verified, a specific denial to each allegation of the complaint, controverted by the defendant, or a denial thereof according to his information and belief; if the complaint be not verified, then a general denial to each of such allegations; but a general denial shall only put in issue the material and express allegations of the complaint. Second—A statement of any new matter or counter claim constituting a defense, in ordinary and concise language.

Answer, what to contain.

SEC. 47. The counter claim mentioned in the last Section, shall be one existing in favor of the defendant and against a plaintiff, between whom a several judgment might be had in the action, and arising out of one of the following causes of action: First—A cause of action arising out of the transaction set forth in the complaint as the foundation of the plaintiff's claim, or connected with the subject of the action. Second—In an action arising upon contract, any other cause of action arising also upon contract and existing at the commencement of the action.

Counter claim

SEC. 48. When cross demands have existed between persons under such circumstances that if one had brought an action against the other a counter claim could have been set up, neither shall be deprived of the benefit thereof by the assignment or death of the other, but the two demands be deemed compensation so far as they equal each other.

Cross demands.

SEC. 49. The defendant may set forth by answer as many defenses and counter claims as he may have. They shall each be separately stated, and the several defenses shall refer to the causes of action which they are intended to answer, in a manner in which they may be intelligibly distinguished.

Several defenses may be set up.

SEC. 50. The plaintiff may, within the number of days in which the defendant is by the summons required to answer, said days to be computed from the time of the service on the plaintiff of a copy of such answer, demur to the same for insufficiency, stating in his demurrer the grounds thereof; and he may also, within the same time, demur to one or more of the defenses set up in the answer. Sham and irrelevant answers and defenses, and so much of any answer as may be irrelevant, redundant or immaterial may be stricken out on motion, and upon such terms as the Court, in its discretion, may impose.

Demurrer, to answer.

SEC. 51. Every pleading shall be subscribed by the party or his attorney, and when the complaint is verified by affidavit, the answer shall be verified also, except as provided in the next Section.

Pleadings to be subscribed, &c.

SEC. 52. The verification of the answer required in the last Section may be omitted when an admission of the truth of the complaint might subject the party to prosecution for felony.

Verification, when omitted.

SEC. 53. When an action is brought upon a written instrument, and the complaint contains a copy of such instru-

Genuineness
of written in-
strument
admitted.

ment, or a copy is annexed thereto, the genuineness and due execution of such instrument shall be deemed admitted, unless the answer denying the same be verified.

Same.

SEC. 54. When the defense to an action is founded upon a written instrument, and a copy thereof is contained in the answer, or a copy is annexed thereto, the genuineness and due execution of such instrument shall be deemed admitted, unless the plaintiff file with the Clerk within five days after the service of the answer, or within such other time as the Court shall order, an affidavit denying the same.

Manner of
verifying
pleadings.

SEC. 55. In all cases of the verification of a pleading, the affidavit of the party shall state that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters, that he believes it to be true. And where a pleading is verified, it shall be by the affidavit of the party, unless he be absent from the county where the attorneys reside, or from some cause unable to verify it, or the facts are within the knowledge of his attorney or other person verifying the same. When a pleading is verified by the attorney, or any other person except the party, he shall set forth in the affidavit the reasons why it is not made by the party. When a corporation is a party, the verification may be made by any officer thereof; or when the Territory, or any officer thereof in its behalf, is a party; the verification may be made by any person acquainted with the facts; except that in actions prosecuted by the Attorney-General in behalf of the Territory, the pleadings need not, in any case, be verified.

Items of
account need
not be set
forth.

SEC. 56. It shall not be necessary for a party to set forth in a pleading the items of an account therein alleged, but he shall deliver to the adverse party within five days, or such other time as the Court may direct, after a demand thereof, in writing, a copy of the account, or be precluded from giving evidence thereof. The Court, or a Judge thereof, may order a further account when the one delivered is too general or is defective in any particular.

Irrelevant
matter.

SEC. 57. If irrelevant or redundant matter be inserted in a pleading, it may be stricken out by the Court on motion of any person aggrieved thereby.

Recovery of
real property.

SEC. 58. In an action for the recovery of real property, such property shall be described, with its metes and bounds, in the complaint, or with other equal certainty.

Judgment.

SEC. 59. In pleading a judgment or other determination of a Court, or officer of especial jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish on the trial the facts conferring jurisdiction.

Conditions
precedent.

SEC. 60. In pleading the performance of conditions precedent in a contract, it shall not be necessary to state the facts showing such performance; but it may be stated generally that the party duly performed all the conditions on his part;

and if such allegation be controverted, the party pleading shall establish on the trial the facts showing such performance.

SEC. 61. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title and the day of its passage, and the Court shall thereupon take judicial notice thereof. Private statutes.

SEC. 62. In an action for libel or slander, it shall not be necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the action arose; but it shall be sufficient to state generally that the same was published, or spoken, concerning the plaintiff; and if such allegation be controverted, the plaintiff shall establish on the trial that it was so published or spoken. Libel or slander, in action for.

SEC. 63. In the actions mentioned in the last Section, the defendant may, in his answer, allege both the truth of the matter charged as defamatory; and any mitigating circumstances to reduce the amount of damages; and, whether he prove the justification or not, he may give in evidence the mitigating circumstances. Truth may be alleged.

SEC. 64. The plaintiff may unite several causes of action in the same complaint, when they all arise out of: First—Contracts express or implied; or: Second—Claims to recover specific real property, with or without damages, for the withholding hereof, or for waste committed thereon, and the rents and profits of the same; or: Third—Claims to recover specific personal property, with or without damage, for the withholding thereof; or: Fourth—Claims against trustee, by virtue of a contract, or by operation of law; or: Fifth—Injuries to character; or: Sixth—Injuries to person; or: Seventh—Injuries to property. But the causes of action so united shall all belong to only one of these classes, and shall affect all the parties to the action, and not require different places of trial, and shall be separately stated; *provided*, however, that an action for malicious arrest and prosecution, or either of them, may be united with an action for either injury to character or to the person. Several causes of actions in one complaint.

SEC. 65. Every material allegation of the complaint, when it is verified, not specifically controverted by the answer, shall for the purpose of the action be taken as true. The allegation of new matter in the answer, shall on the trial be deemed controverted by the adverse party. Allegations, when taken as true.

SEC. 66. A material allegation in a pleading is one essential to the claim, or defense, and which could not be stricken from the pleading without leaving it insufficient. Material allegations.

SEC. 67. After demurrer, and before the trial of issue on demurrer, either party may, within ten days, amend any pleading demurred to, of course, and without costs, filing the same as amended, and serving a copy thereof upon the adverse party or his attorney, who shall have ten days to answer or demur thereto if the pleading be a complaint, or to demur thereto if it be an answer; but a party shall not so damen more than once. When a demurrer to a complaint is overruled, and Answer after demurrer.

there is no answer filed, the Court may, upon such terms as shall be just, and upon payment of costs, allow the defendant to file an answer. If a demurrer to the answer be overruled, the facts alleged in the answer shall still be considered as denied.

Amendment
of pleadings.

SEC. 68. The Court may, in furtherance of justice, and on such terms as may be proper, amend any pleading or proceedings by adding or striking out the name of any party, or by correcting a mistake in the name of the party, or a mistake in any other respect, and may upon like terms enlarge the time for an answer or demurrer, or demurrer to an answer filed. The Court may likewise, upon affidavit showing good cause therefor, after notice to the adverse party, allow, upon such terms as may be just, an amendment to any pleading or proceeding in other particulars, and may upon like terms allow an answer to be made after the time limited by this Act, and may, upon such terms as may be just, and upon payment of costs, relieve a party or his legal representatives from a judgment, order or other proceeding taken against him through his mistake, inadvertence, surprise or excusable neglect; and when, from any cause, the summons and a copy of the complaint in an action have not been personally served on the defendant, the Court may allow, on such terms as may be just, such defendant or his legal representatives, at any time within six months after the rendition of any judgment in such action, to answer to the merits of the original action.

Time for
answer.

Plaintiff ignorant
of
defendant's
name.

SEC. 69. When the plaintiff is ignorant of the name of a defendant, such defendant may be designated in any pleading or proceeding by any name, and when his true name is discovered the pleading or proceeding may be amended accordingly.

Pleadings,
how construed.

SEC. 70. In the construction of a pleading for the purpose of determining its effect, its allegations shall be liberally construed, with a view to substantial justice between the parties.

Error, when to
be disregarded

SEC. 71. The Court shall in every stage of an action disregard any error or defect in the pleadings or proceedings, which shall not affect the substantial rights of the parties, and no judgment shall be reversed or affected by reason of such error or defect.

TITLE V.

Of the Provisional Remedies in Civil Actions.

CHAPTER 1.—ARREST AND BAIL.

SEC. 72. No person shall be arrested in a civil action except as prescribed by this Act.

SEC. 73. The defendant may be arrested, as hereinafter prescribed, in the following cases arising after the passage of this Act: First—In an action for the recovery of money or damages on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the Terri-

Arrest.

tory with intent to defraud his creditors, or when the action is for libel or slander. Second—In an action for a fine or penalty, or for money or property embezzled, or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity or for misconduct or neglect in office, or in a professional employment, or for a wilful violation of duty. Third—In an action to recover the possession of personal property unjustly detained, when the property or any part thereof has been concealed, removed or disposed of, so that it cannot be found or taken by the Territorial Marshal, his deputy, or the Sheriff, or his deputy. Fourth—When the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought, or in concealing or disposing of the property, for the taking, detention or conversion of which the action is brought. Fifth—When the defendant has removed or disposed of his property, or is about to do so, with the intent to defraud his creditors.

When may be made.

SEC. 74. An order for the arrest of the defendant shall be obtained from a Judge of the Court in which the action is brought.

Order, how obtained.

SEC. 75. The order may be made whenever it shall appear to the Judge, by the affidavit of the plaintiff or some other person, that a sufficient cause of action exists, and the case is one of those mentioned in Section Seventy-Three. The affidavit shall be either positive or upon information and belief; and when upon information and belief, it shall state the facts upon which the information and belief are founded. If an order of arrest be made, the affidavit shall be filed with the Clerk of the Court.

Same.

SEC. 76. Before making the order the judge shall require a written undertaking, on the part of the plaintiff, with sureties, to the effect that if the defendant recover judgment, the plaintiff will pay all costs and charges that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least five hundred dollars. Each of the sureties shall annex to the undertaking an affidavit that he is a resident and householder or freeholder within the Territory and worth double the sum specified in the undertaking over and above all his debts and liabilities, exclusive of property exempt from execution. The undertaking shall be filed with the Clerk of the Court.

Plaintiff to give undertaking.

SEC. 77. The order may be made to accompany the summons, or any time afterwards before judgment. It shall require the Territorial Marshal, his deputy, the Sheriff of the County, or his deputy, where the defendant may be found, forthwith to arrest him and hold him to bail in a specified sum, and to return the order at the time therein mentioned to the Clerk of the Court in which the action is pending.

When order may be made, form.

Order, duty
of Sheriff.

SEC. 78. The order of arrest, with a copy of the affidavit upon which it is made, shall be delivered to the Sheriff, or other officer, who, upon arresting the defendant, shall deliver to him the copy of the affidavit, and also if desired a copy of the order of arrest.

How executed

SEC. 79. The Sheriff, or other Officer, shall execute the order by arresting the defendant and keeping him in custody until discharged by law.

Defendant,
how dis-
charged.

SEC. 80. The defendant, at any time before execution, shall be discharged from the arrest either upon giving bail or upon depositing the amount of money mentioned in the order of arrest, as provided in this Chapter.

Bail, how
given.

SEC. 81. The defendant may give bail by causing a written undertaking, as directed by the Judge, to be executed by two or more sufficient sureties, stating their places of residence and occupations, to the effect that they are bound in the amount mentioned in the order of arrest; that the defendant shall at all times render himself amenable to the process of the Court during the pendency of the action, and to such as may be issued to enforce the judgment therein; or that they will pay to the plaintiff the amount of any judgment which may be recovered in the action.

Surrender.

SEC. 82. At any time before judgment, or within ten days thereafter, the bail may surrender the defendant in their exoneration; or he may surrender himself to the Sheriff, or other officer of the Court, where he was arrested.

May arrest
defendant.

SEC. 83. For the purpose of surrendering the defendant, the bail, at any time or place before they are finally charged, may themselves arrest him; or by a written authority, indorsed on a certified copy of the undertaking, may empower the Territorial Marshal, or the Sheriff to do so. Upon the arrest of the defendant by said officer, or upon his delivery to him by the bail, or upon his own surrender, the bail shall be exonerated, *provided*, such arrest, delivery or surrender take place before the expiration of ten days after judgment, but if such arrest, delivery, or surrender be not made within ten days after judgment, the bail shall be finally charged on their undertaking, and be bound to pay the amount of the judgment within ten days thereafter.

Judgment
against.

SEC. 84. If the bail neglect or refuse to pay the judgment within ten days after they are finally charged, an action may be commenced against such bail for the amount of such original judgment.

How exone-
rated.

SEC. 85. The bail shall also be exonerated by the death of the defendant, or his imprisonment in the Penitentiary, or by his legal discharge from the obligation to render himself amenable to the process.

Proceedings
after arrest.

SEC. 86. Within the time limited for that purpose, the Territorial Marshal, or Sheriff, shall file the order of arrest in the office of the Clerk of the Court in which the action is pending, with his return indorsed thereon, together with a copy of the undertaking of the bail. The original undertaking he shall retain in his possession until filed, as herein provided.

The plaintiff within ten days thereafter may serve upon the officer a notice that he does not accept the bail, or he shall be deemed to have accepted them, and the officer shall be exonerated from liability. If no notice be served within ten days; the original undertaking shall be filed with the Clerk of the Court.

SEC. 87. Within five days after the receipt of notice, the Territorial Marshal, or Sheriff, or defendant may give to the plaintiff, or his attorney, notice of the justification of the same, or other bail, (specifying the places of residence and occupations of the latter) before the Judge of the Court, or Clerk, at a specified time and place; the time to be not less than five nor more than ten days thereafter, except by consent of parties. In case other bail be given, there shall be a new undertaking.

Notice of
justification
of bail.

SEC. 88. The qualifications of bail shall be as follows: First—Each of them shall be a resident, and householder, or freeholder, within the county. Second—Each shall be worth the amount specified in the order of arrest, or the amount to which the order is reduced, as provided in this Chapter, over and above all his debts and liabilities, exclusive of property exempt from execution; but the Judge or Clerk, on justification, may allow more than two sureties to justify severally in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

Qualifications
of bail.

SEC. 89. For the purpose of justification, each of the bail shall attend before the Judge, or Clerk, at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching his sufficiency, in such manner as the Judge, or Clerk in his discretion may think proper. The examination shall be reduced to writing, and subscribed by the bail, if required by the plaintiff.

Bail, how to
justify.

SEC. 90. If the Judge, or Clerk, find the bail sufficient, he shall annex the examination to the undertaking, indorse his allowance thereon, and cause them to be filed, and the officer shall thereupon be exonerated from liability.

Allowance of
bail.

SEC. 91. The defendant may at the time of his arrest, instead of giving bail, deposit with the Territorial Marshal or Sheriff, the amount mentioned in the order. In case the amount of the bail be reduced, as provided in this Chapter, the defendant may deposit such amount instead of giving bail. In either case the officer shall give the defendant a certificate of the deposit made, and the defendant shall be discharged from custody.

Deposit in lieu
of bail.

SEC. 92. The Territorial Marshal, or Sheriff, shall immediately after the deposit pay the same into Court, and take from the Clerk receiving the same two certificates of such payment; the one of which he shall deliver or transmit to the plaintiff, or his attorney, and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the officer to collect the sum deposited as in other cases of delinquency.

Disposition of
deposit.

SEC. 93. If money be deposited, as provided in the last two sections, bail may be given, and may justify upon

Bail after
deposit.

notice at any time before judgment; and on the filing of the undertaking and justification with the Clerk, the money deposited shall be refunded by such Clerk to the defendant.

Application of
deposit after
judgment.

SEC. 94. Where money shall have been deposited, if it remain on deposit at the time of a recovery of a judgment in favor of the plaintiff, the Clerk shall, under the direction of the Court, apply the same in satisfaction thereof, and after satisfying the judgment shall refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the Clerk shall, under like direction of the Court, refund to him the whole sum deposited and remaining unapplied.

Liability of
Sheriff.

SEC. 95. If after being arrested, the defendant escape or be rescued, the Territorial Marshal, or other officer, shall himself be liable as bail; but he may discharge himself from such liability by the giving and justification of bail at any time before judgment.

Judgment
against
Sheriff.

SEC. 96. If a judgment be recovered against the Territorial Marshal, or other officer, upon his liability as bail, and an execution thereon be returned unsatisfied, in whole or in part, the same proceedings may be had on his official bond for the recovery of the whole or any deficiency, as in other cases of delinquency.

Vacating the
order of
arrest.

SEC. 97. A defendant arrested may, at any time before the justification of bail, apply to the Judge who made the order, or the Court in which the action is pending, upon reasonable notice to the plaintiff, to vacate the order of arrest, or to reduce the amount of bail. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other proofs in addition to those on which the order of arrest was made.

Reduction of
bail.

SEC. 98. If upon such application it shall satisfactorily appear that there was not sufficient cause for the arrest, the order shall be vacated, or if it satisfactorily appear that the bail was fixed too high, the amount shall be reduced.

CHAPTER 2. — CLAIMS AND DELIVERY OF PERSONAL PROPERTY.

When claim
may be made.

SEC. 99. The plaintiff in an action to recover the possession of personal property, may, at the time of issuing the summons, or at any time before answer, claim the delivery of such property to him as provided in this Chapter.

Affidavit to
obtain order
for delivery.

SEC. 100. Where a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one on his behalf, showing: First—That the plaintiff is the owner of the property claimed, (particularly describing it) or is lawfully entitled to the possession thereof. Second—That the property is wrongfully detained by the defendant. Third—The alleged cause of the detention thereof according to his best knowledge, information and belief. Fourth—That the same has not been taken for a tax, assessment or fine, pursuant to a statute, or seized under an execution or an attachment against the property of the

plaintiff, or, if so seized, that it is by statute exempt from such seizure; and, Fifth—The actual value of the property.

SEC. 101. The plaintiff or his attorney, may thereupon, by endorsement in writing upon the affidavit, require the Territorial Marshal, or the Sheriff of the County, where the property claimed may be, to take the same from the defendant. Delivery.

SEC. 102. Upon a receipt of the affidavit and notice, with a written undertaking, executed by two or more sufficient sureties, approved by the Territorial Marshal, or Sheriff, to the effect that they are bound to the defendant in double the value of the property, as stated in the affidavit for the prosecution of the action, for the return of the property to the defendants, if return thereof be adjudged, and for the payment to him of such sum as may from any cause be recovered against the plaintiff, the Territorial Marshal, or other officer, shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, notice and undertaking, by delivering the same to him personally if he can be found, or to his agent, from whose possession the property is taken: or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion; or if neither have any known place of abode, by putting them in the nearest Post Office (post paid), directed to the defendant. Proceedings on.

SEC. 103. The defendant may, within two days after the service of a copy of the affidavit and the undertaking, give notice to the Territorial Marshal, his deputy, the Sheriff of the County, or his deputy, that he excepts to the sufficiency of the sureties. If he fails to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify on notice in like manner as upon bail on arrest; and the Territorial Marshal, his deputy, the Sheriff of the County, or his deputy; shall be responsible for the sufficiency of the sureties until the objection to them is either waived, as above provided, or until they justify. If the defendant except to the sureties, he cannot reclaim the property, as provided in the next Section. Sureties excepting to.

SEC. 104. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the Territorial Marshal, his deputy, the Sheriff of the County, or his deputy, a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may for any cause be recovered against the defendant. If a return of the property be not required within five days after the taking and serving of notice to the defendant, it shall be delivered to the plaintiff, except as provided in Section One Hundred and Nine. Defendant may require return.

SEC. 105. The defendant's sureties, upon notice to the

Justification
of defendant's
sureties.

plaintiff of not less than two or more than five days, shall justify before the Judge or the Clerk, in the same manner as upon bail on arrest; and upon such justification the Territorial Marshal, or the Sheriff of the County, shall deliver the property to the defendant. The Territorial Marshal, or the Sheriff of the County, shall be responsible for the defendant's sureties until they justify, or until the justification is completed or expressly waived, and may retain the property until that time. If they, or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

Qualification
of sureties.

SEC. 106. The qualification of sureties and their justification shall be such as are prescribed by this Act in respect to bail upon an order of arrest.

Property
Concealed.

SEC. 107. If the property, or any part thereof, be concealed in a building or enclosure, the Territorial Marshal, or the Sheriff of the County, shall publicly demand its delivery. If it be not delivered; he shall cause the building or enclosure to be broken open, and take the property into his possession; and if necessary, he may call to his aid the power of the County.

Sheriff to keep
property.

SEC. 108. When the Territorial Marshal, or the Sheriff of the County, shall have taken property, as in this Chapter provided, he shall keep it in a secure place, and deliver it to the party entitled thereto upon receiving his lawful fees for taking and necessary expenses for keeping the same.

Proceedings
when property
claimed by
other person.

SEC. 109. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or right to possession thereof, stating the grounds of such title or right, and serve the same upon the Territorial Marshal, or the Sheriff of the County, the Territorial Marshal, or the Sheriff of the County, shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff on demand of him or his agent, indemnify the Territorial Marshal, or the Sheriff of the County, against such claim by an undertaking, by two sufficient sureties, accompanied by their affidavits, that they are each worth double the value of the property as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and are freeholders or householders in the County; and no claim to such property by any other person than the defendant or his agent shall be valid against the Territorial Marshal, or the Sheriff of the County, unless so made.

Notice, &c., to
be filed.

SEC. 110. The Territorial Marshal, or the Sheriff of the County, shall file the notice, undertaking or affidavit, with his proceedings thereon, with the Clerk of the Court in which the action is pending, within twenty days after taking the property mentioned therein.

CHAPTER 3.—INJUNCTION.

SEC. 111. An injunction is a writ or order requiring a

person to refrain from a particular act. The order or writ may be granted by the Court in which the action is brought, or by a Judge thereof, and, when made by a Judge, may be enforced as the order of the Court.

Injunction defined.

SEC. 112. An injunction may be granted in the following cases: First—When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually. Second—When it shall appear by the complaint or affidavit that the commission or continuance of some act, during the litigation, would produce great or irreparable injury to the plaintiff. Third—When it shall appear, during the litigation, that the defendant is doing, or threatens, or is about to do or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

In what cases may be granted.

SEC. 113. The injunction may be granted at the time of issuing the summons upon the complaint, and at any time afterwards, before judgment, upon affidavits or other evidence. The complaint in the one case, and the affidavits or other evidence in the other, shall show satisfactorily that sufficient grounds exist therefor. No injunction shall be granted on the complaint, unless it be verified by the oath of the plaintiff, or some one in his behalf, that he, the person making the oath, has read the complaint or heard the complaint read, and knows the contents thereof, and the same is true of his own knowledge, except the matters therein stated on information and belief, and that as to those matters he believes it to be true. When granted on the complaint, a copy of the complaint and verification attached shall be served with the injunction: when granted upon affidavit, without notice, a copy of the affidavit shall be served with the injunction.

When may be granted.

SEC. 114. An injunction shall not be allowed after the defendant has answered unless upon notice, or upon an order made as provided in Section One Hundred and Sixteen, but in such case the defendant may be restrained until the decision of the Court or Judge granting or refusing the injunction.

After answer.

SEC. 115. On granting an injunction, or a restraining order, the Court or Judge shall require, except where the Territory, a County, or a City is a party plaintiff, a written undertaking, with sufficient sureties, to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction, if the Court finally decide that the plaintiff was not entitled thereto.

Undertaking.

SEC. 116. If the Court or Judge deem it proper that the defendant, or any of several defendants, should be heard before granting the injunction, an order shall be made fixing a time and place for hearing the application for the injunction, a copy of which order shall be served upon the person or persons designated therein, and the defendant may in the meantime

Order of hearing.

be restrained. Upon the hearing, the parties may use affidavits, other written evidence and oral testimony.

Injunction to
suspend busi-
ness of
corporation.

Sec. 117. An injunction or restraining order to suspend the general and ordinary business of a corporation shall not be granted without due notice of the application therefor, to be served in the manner prescribed for service of the summons in the action.

Motion to
dissolve or
modify.

Sec. 118. If an injunction be granted without notice, the defendant at any time before the trial, may apply, upon reasonable notice, to the Judge who granted the injunction, or to the Court in which the action is pending, or a Judge thereof, to dissolve or modify the same. The application may be made upon the complaint and the affidavit, or affidavits, on which the injunction was granted, if any were used, or upon affidavits or other testimony on the part of the defendant, with or without the answer. If the application be made upon affidavit, or other evidence, on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence in addition to the affidavits on which the injunction was granted, and the defendant may then in proper cases introduce rebutting affidavits or other evidence: *provided*, that for the purpose of allowing the plaintiff to introduce further evidence, the answer or verification thereto attached shall be deemed an affidavit.

Court to
prescribe
rules, &c.

Sec. 119. The Courts may prescribe by rule the time when, and the cases in which, the service of affidavits to be used upon applications for injunctions, and motions to dissolve injunctions, shall be made; and may also provide by rule for the giving of notice before such hearings, of the kind of testimony to be used, and make all needful rules on the subject of injunctions not in conflict with this or other Acts.

Injunction
may be
refused, &c.

Sec. 120. If upon the hearing of an application for an injunction, or for the dissolution of an injunction, it does not satisfactorily appear that there is a sufficient cause for an injunction, or if it appear that the extent of the injunction is too great, it shall be refused, dissolved or modified, as the case may be, and upon all such applications in actions respecting mines, the Court, or Judge hearing the same, may, instead of granting or continuing the injunction, make an order requiring the party against whom the application is made, to give a bond in an amount fixed by such Court or Judge, with sufficient sureties, to be approved by such Court or Judge, conditioned for the payment to the plaintiff, of all damages which he may sustain by reason of the use or occupation of the mine, or other acts complained of, by the party giving the bond, his or its agents, servants, employes, grantees or other persons by his or its consent pending the litigation, if the plaintiff finally recover: or that upon failure to give such bond within the time prescribed in the order, the injunction shall be granted, or continued, as the case may be; or the Court or Judge, may appoint a receiver, to take charge of the mine, or the proceeds thereof, pending the litigation.

Sec. 121. It shall be good cause in the discretion of the

Court, or Judge, for the dissolution of an injunction that the plaintiff is doing, or causing, or permitting to be done, some act pending the litigation which, if continued, will be injurious to the defendant if he finally recover, or to the property in dispute. But the Court, or Judge, hearing a motion to dissolve an injunction, may instead of granting such motion, direct by order that the plaintiff give to the parties restrained a bond conditioned, as provided in Section One Hundred and Twenty, or upon his failure to do so, within the time prescribed in such order, that the injunction shall be dissolved.

Dissolution of
injunction.

CHAPTER 4.—ATTACHMENT.

SEC. 122. The plaintiff, at the time of issuing the summons, or at any time afterwards, may have the property of the defendant attached, as security for the satisfaction of any judgment that may be recovered, unless the defendant give security to pay such judgment, as hereinafter provided in the following cases: In an action upon a contract, which is not secured by mortgage, lien or pledge upon real or personal property, situated or being in this Territory, or, if so secured, when such security has been rendered nugatory by the act of the defendant, against a defendant not residing in this Territory, or against a person who has departed or is about to depart from the Territory or County wherein the action is brought, or who stands in defiance of an officer, or conceals himself so that process cannot be served on him, or who is disposing of his property with intent to defraud his creditors.

Attachment.

SEC. 123. The Clerk of the Court shall issue the writ of attachment upon receiving an affidavit by or on behalf of the plaintiff, which shall be filed, showing: that the defendant is indebted to the plaintiff upon a contract, specifying the nature and amount thereof as near as may be over and above all legal set-offs or counter claims, and that the same has not been secured by any mortgage, lien or pledge upon real or personal property situate or being in this Territory, or, if so secured, that said security has been rendered nugatory by the act of the defendant; and that the same is an actual, bona fide, existing demand, due and owing from the defendant to the plaintiff, and that the attachment is not sought and the action is not prosecuted to hinder, delay or defraud any creditor of the defendant, and specifying one or more of the causes set forth in the preceding Section.

Writ, how
issued.

SEC. 124. Before issuing the writ the Clerk shall require a written undertaking on the part of the plaintiff, in a sum not less than two hundred dollars, nor exceeding the amount claimed by the plaintiff, with sufficient sureties, to the effect that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

Undertaking
required.

SEC. 125. The writ shall be directed to the Territorial Marshal, his deputy, or the Sheriff of any County, in which

Requirement
of writ.

property of such defendant may be, and require him to attach and safely keep all the property of such defendant within the County not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint, unless the defendant give him security by the undertaking, of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides cost, in which case to take such undertaking. Several writs may be issued at the same time to the Territorial Marshal, his deputy, or the Sheriffs of different Counties.

What property
may be
attached.

SEC. 126. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profits therein, and all debts due such defendant, and all other property in this Territory of such defendant not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.

How writ
should be
executed.

SEC. 127. The Territorial Marshal, his deputy, the Sheriff of the County, or his deputy, to whom the writ is directed and delivered shall execute the same without delay, and if the undertaking mentioned in Section One Hundred and Twenty-six be not given—as follows: First—Real property shall be attached by leaving a copy of the writ with the occupant thereof; or if there be no occupant, by posting a copy in a conspicuous place thereon, and filing a copy, together with a description of the property attached, with the Recorder of the County. Second—Personal property capable of manual delivery shall be attached by taking it into custody. Third—Stock or shares, or interest in Stock or shares, of any corporation or company, shall be attached by leaving with the President, or other head of the same, or the Secretary, Cashier, or Managing Agent thereof, a copy of the writ, and a notice stating the stock or interest of the defendant is attached in pursuance of such writ. Fourth—Debts and credits, and other personal property, not capable of manual delivery, shall be attached by leaving with the person owing such debts, or having in his possession, or under his control, such credits or other personal property, a copy of the writ, and a notice that the debts owing by him to the defendant, or the credits or other personal property in his possession or under his control belonging to the defendant, are attached in pursuance of such writ.

Property in
hands of other
person.

SEC. 128. Upon receiving information in writing from the plaintiff or his attorney, that any person has in his possession, or under his control, any credits or other personal property belonging to the defendant, or is owing any debt to the defendant, the Territorial Marshal, or the Sheriff of the County, shall serve upon such person a copy of the writ, and a notice that such credits, or other property or debts, as the case may be, are attached in pursuance of such writ.

Liability of
other persons.

SEC. 129. All persons having in their possession, or under their control, any credits or other personal property belonging to the defendant, or owing any debts to the defend-

ant at the time of service upon them of a copy of the writ and notice, as provided in the two last Sections, shall be, unless such property is delivered up or transferred, or such debts be paid to the Territorial Marshal, or the Sheriff of the County, liable to the plaintiff for the amount of such credits, property or debts, until the attachment be discharged, or any judgment recovered by him be satisfied.

SEC. 130. Any person owing debts to the defendant, or having in his possession or under his control any credits or other personal property, belonging to the defendant, may be required to attend before the Court, or Judge, or a referee appointed by the Court, or Judge, and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting his property, and may be examined on oath. The Court, or Judge, may, after such examination, order personal property capable of manual delivery to be delivered to the Territorial Marshal, or the Sheriff of the County, on such terms as may be just, having reference to any liens thereon or claims against the same, and a memorandum to be given of all other personal property, containing the amount and description thereof. Examination.

SEC. 131. The Territorial Marshal, or the Sheriff of the County shall make a full inventory of the property attached, and return the same with the writ. To enable him to make such returns as to debts and credits attached, he shall request, at the time of service, the party owing the debt, or having the credit, to give him a memorandum stating the amount and description of each; and if such memorandum be refused, he shall return the fact of refusal with the writ. The party refusing to give the memorandum, may be required to pay the costs of any proceeding, taken for the purpose of obtaining information respecting the amount and description of such debt or credit. Return of Officer.

SEC. 132. If any of the property attached be perishable, the Territorial Marshal, or the Sheriff of the County, shall sell the same in the manner in which such property is sold on execution. The proceeds and other property attached by him shall be retained by him, to answer any judgment that may be recovered in the action, unless sooner subject to execution upon another judgment recovered previous to the issuing of the attachment. Debts and credits attached may be collected by him, if the same can be done without suit. The receipt of the Territorial Marshal, or the Sheriff of the County, shall be a sufficient discharge for the amount paid. Perishable property to be sold.

SEC. 133. If any personal property attached be claimed by a third person as his property, the Territorial Marshal, or the Sheriff of the County, may summon a jury of six men to try the validity of such claim; and such proceedings shall be had thereon, with the like effect, as in case of a claim after levy upon execution. Property claimed by third party.

SEC. 134. If judgment be recovered by the plaintiff, the Territorial Marshal, or the Sheriff of the County, shall satisfy the same out of the property attached by him which has not Judgment, how satisfied.

been delivered to the defendant, or a claimant as hereinafter provided, or subjected to execution on another judgment recovered, previous to the issuing of the attachment, if it be sufficient for that purpose: First—By paying to the plaintiff the proceeds of all sales of perishable property sold by him, or of any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment. Second—If any balance remain due, and an execution shall have been issued on the judgment, he shall sell under the execution, so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notice of the sales shall be given, and the sales conducted as in other cases of sales on execution.

Notice of sale.

SEC. 135. If, after selling all the property attached by him remaining in his hands, and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting the fees, to the payment of the judgment, any balance shall remain due, the Territorial Marshal, or the Sheriff of the County, shall proceed to collect such balance as upon an execution in other cases. Whenever the judgment shall have been paid; the Territorial Marshal, or the Sheriff of the County, upon reasonable demand, shall deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment.

Same.

Proceedings
when execu-
tion returned
unsatisfied.

SEC. 136. If the execution be returned unsatisfied, in whole or in part, the plaintiff may prosecute any undertaking given pursuant to Section One Hundred and Twenty-Six, or Section One Hundred and Forty, or he may proceed as in other cases upon the return of an execution.

Proceedings
when defend-
ant recovers
judgment.

SEC. 137. If the defendant recover judgment against the plaintiff, any undertaking received in the action, all the proceeds of sales and money collected by the Territorial Marshal, or the Sheriff of the County, and all the property attached remaining in the hands of the Territorial Marshal, or the Sheriff of the County, shall be delivered to the defendant or his agent; the order of attachment shall be discharged and the property released therefrom.

Discharge of
attachment,
When made.

SEC. 138. Whenever the defendant shall have appeared in the action, he may apply, upon reasonable notice to the plaintiff, to the Court in which the action is pending, or to the Judge thereof, for an order to discharge the attachment, wholly or in part, upon the execution and filing of the undertaking mentioned in the next Section. Such order may be granted directing the release from the operation of the attachment, upon the filing of such undertaking and the justification of the sureties thereon, if required by the plaintiff, of all or any part of the property, money, debts or credits attached as the case may be. All the proceeds of sales and moneys collected by the Territorial Marshal, or the Sheriff of the County, and all the property attached remaining in his hands, so released, shall be delivered or paid to the defendant upon the filing of

such undertaking and making such justification, if required by the plaintiff.

SEC. 139. On granting such order the Court or the Judge shall require an undertaking on behalf of the defendant, with at least two sureties, residents and freeholders or householders in the County, which shall be filed to the effect in case the value of the property or the amount of money, debts or credits sought to be released shall equal or exceed the amount claimed by the plaintiff in the complaint, that the defendant will pay to the plaintiff the amount of the judgment which may be recovered in favor of the plaintiff in the action, not exceeding the sum specified in the undertaking, which shall be at least double the amount so claimed by the plaintiff; or to the effect, in case the value of the property or the amount of money, debts or credits sought to be released shall be less than the amount so claimed by the plaintiff, that the defendant will pay the amount of such judgment, to the extent of the value of the property, or amount of money, or debts or credits sought to be released, not exceeding the sum specified in the undertaking, which shall be at least double the value of such property, money, debts or credits. The value of such property sought to be released, if disputed, shall be determined by the Court or Judge thereof, upon proof, or by a sworn appraiser, or sworn appraisers, not exceeding three, to be appointed by the Court or the Judge for that purpose. Before filing the undertaking the defendant shall serve a copy thereof upon the plaintiff, and if the plaintiff require a justification by the sureties, he shall give notice thereof to the defendant within two days, or at the time of giving notice of motion for an order to discharge the attachment, the defendant may in his notice name the sureties; and if the plaintiff require them to justify, he shall give notice thereof at the hearing of the motion. If required, the sureties shall justify before the Court in which the suit is pending, or the Judge thereof, after reasonable notice.

Undertaking
of defendant.

SEC. 140. The defendant may also, any time before the time of answering expires, apply on motion, upon reasonable notice to the plaintiff, to the Court in which the action is brought, or to the Judge thereof, for the discharge of the attachment, on the ground that the writ was improperly issued.

Motion for discharge of attachment.

SEC. 141. If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the writ of attachment was issued.

Plaintiff may oppose by other evidence

SEC. 142. If upon such application, it shall satisfactorily appear that the writ of attachment was improperly issued, it shall be discharged.

Discharge of writ.

SEC. 143. The Territorial Marshal, or the Sheriff of the County, shall return the writ of attachment with the summons, if issued at the same time; otherwise within twenty days after its receipt, with a certificate of his proceeding indorsed thereon or attached thereto.

Return of officer.

CHAPTER 5.—DEPOSIT IN COURT.

Court may
order delivery.

SEC. 144. When it is admitted, by the pleading or examination of a party, that he has in his possession or under his control, any money or other thing capable of delivery, which being the subject of litigation is held by him as trustee for another party, or which belongs or is due to another party, the Court may order the same, upon motion, to be deposited in Court, or delivered to such party, upon such conditions as may be just, subject to the further direction of the Court.

Appointment
of receiver.

SEC. 145. A receiver may be appointed by the Court in which the action is pending, or by a Judge thereof: First—Before judgment, provisionally, on the application of either party, when he establishes a *prima facie* right to the property, or an interest in the property which is the subject of the action, and which is in the possession of an adverse party, and the property or its rents and profits are in danger of being lost or materially injured or impaired. Second—After judgment to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal; and Third—In such other cases as are in accordance with the practice of Courts of Equity jurisdiction.

TITLE VI.

Of the Trial and Judgment in Civil Actions.

CHAPTER I.—JUDGMENT IN GENERAL.

Judgment.

SEC. 146. A judgment is the final determination of the rights of the parties in the action or proceeding, and may be entered in term or vacation.

How given.

SEC. 147. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side, as between themselves.

Against
several
defendants.

SEC. 148. In an action against several defendants, the Court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others whenever a several judgment is proper.

Extent of
relief.

SEC. 149. The relief granted to the plaintiff, if there be no answer, shall not exceed that which he shall have demanded in his complaint; but in any other case the Court may grant him any relief consistent with the case made by the complaint and embraced within the issue.

Dismissal of
action or
nonsuit.

SEC. 150. An action may be dismissed, or a judgment of nonsuit entered in the following cases: First—By the plaintiff himself at any time before trial, upon the payment of costs, if a counter claim has not been made. If a provisional remedy has been allowed, the undertaking shall thereupon be delivered by the Clerk to the defendant, who may have his action

thereon. Second—By either party upon the written consent of the other. Third—By the Court when the plaintiff fails to appear on the trial, and the defendant appears and asks for the dismissal. Fourth—By the Court, when upon trial and before the final submission of the case the plaintiff abandons it. Fifth—By the Court, upon motion of the defendant, when upon the trial the plaintiff fails to prove a sufficient case for the jury. The dismissal mentioned in the first two subdivisions shall be made by an entry in the Clerk's register. Judgment may thereupon be entered accordingly. In every other case the judgment shall be rendered on the merits.

CHAPTER 2.—JUDGMENT UPON FAILURE TO ANSWER.

SEC. 151. Judgment may be had, if the defendant fail to answer the complaint, as follows: First—In an action arising upon contract for the recovery of money or damages only, if no answer has been filed with the Clerk of the Court within the time specified in the summons, or such further time as may have been granted, the Clerk, upon the application of the plaintiff, shall enter the default of the defendant, and immediately thereafter enter judgment for the amount specified in the summons, including the costs, against the defendant, or against one or more of several defendants, in the cases provided for in Section Thirty-Two. Second—In other actions, if no answer has been filed with the Clerk of the Court within the time specified in the summons, or such further time as may have been granted, the Clerk shall enter the default of the defendant; and thereafter the plaintiff may apply, at the first, or any subsequent term of the Court, for the relief demanded in the complaint. If the taking of an account, or the proof of any fact, be necessary to enable the Court to give judgment, or to carry the judgment into effect, the Court may take the account, or hear the proof, or may, in its discretion, order a reference for that purpose. And where the action is for the recovery of damages, in whole or in part, the Court may order the damages to be assessed by a jury; or, if to determine the amount of damages, the examination of a long account be necessary, by reference, as above provided. Third—In actions where the service of summons was by publication, the plaintiff, upon the expiration of the time designated in the order of publication, may, upon proof of the publication, and that no answer has been filed, apply for judgment; and the Court shall thereupon require proof to be made of the demand mentioned in the complaint, and if the defendant be not a resident of the Territory, shall require the plaintiff, or his agent, to be examined on oath respecting any payments that have been made to the plaintiff, or to any one for his use, on account of such demand, and may render judgment for the amount which he is entitled to recover.

CHAPTER 3.—OF ISSUES AND THE MANNER OF THEIR DISPOSITION.

When an issue arises. SEC. 152. An issue arises when a fact or conclusion of law is maintained by the one party, and controverted by the other. Issues are of two kinds: First—Of law; and: Second—Of fact.

Of law. SEC. 153. An issue of law arises upon a demurrer to the complaint, or an answer as to some part thereof.

Of fact. SEC. 154. An issue of fact arises: First—Upon a material allegation in the complaint, controverted by the answer; and, Second—Upon new matter in the answer, except an issue of law is joined therein.

Of law, how tried. SEC. 155. An issue of law shall be tried by the Court unless it be referred, upon consent, as provided in Chapter Six of this Title.

Of fact, how tried. SEC. 156. An issue of fact shall be tried by a jury, unless a jury trial is waived, or a reference be ordered as provided in this Act. Where there are issues, both of law and fact, to the same complaint, the issue of law shall be first disposed of.

Entry of cases on Calendar. SEC. 157. The Clerk shall enter cases upon the calendar of the Court according to the date of the issue, unless otherwise provided by rule of Court.

SEC. 158. Either party may bring the issue to trial, or to a hearing, and in the absence of the adverse party, unless the Court for good cause otherwise direct, may proceed with the case and take a dismissal of the action, or a verdict or judgment, as the case may require.

Postponement of trial. SEC. 159. A motion to postpone a trial, on the ground of the absence of evidence, shall only be made upon affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it. The Court may also require the moving party to state, upon affidavit, the evidence which he expects to obtain; and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed. The party obtaining the postponement of a trial shall also, if required by the adverse party, consent that the testimony of any witness of such adverse party, who is in attendance, be then taken by deposition before a Judge or Clerk of the Court in which the case is pending, or before such other officer as the Court may indicate, which shall accordingly be done, and the testimony so taken may be read on the trial with the same effect, and subject to the same objections as if the witnesses were produced. In actions involving the title to mining claims and quartz ledges, if it be made to appear to the satisfaction of the Court that in order that justice may be done, and the action fairly tried on its real merits, it is necessary that further developments should be made, and that the party applying has been guilty of no laches and is acting in good faith, the Court shall grant the postponement of the

trial of the action, giving the party a reasonable time in which to prepare for trial. And in granting such postponement, the Court may, in its discretion, annex as a condition thereto, an order that the party obtaining such postponement shall not, pending the trial of the action, remove from the premises in controversy, any valuable quartz rock, earth or ores, and for any violation of an order so made, the Court, or Judge thereof, may punish for contempt, as in the cases of violation of an order of injunction, and may also vacate the order of postponement.

CHAPTER 4.—TRIAL BY JURY.

ARTICLE 1.

Formation of the Jury.

SEC. 160. When the action is called for trial by jury, the Clerk shall prepare separate ballots, containing the names of the jurors summoned who have appeared and not been excused, and deposit them in a box. He shall then draw from the box twelve names, and the persons whose names are drawn shall constitute the jury. If the ballots become exhausted before the jury is complete, or if from any cause a juror or jurors be excused or discharged, the Territorial Marshal, or the Sheriff of the County shall summon, under the direction of Court, from the citizens of the County, and not from bystanders, so many qualified persons as may be necessary to complete the jury. The jury shall consist of twelve persons, unless the parties consent to a less number. The parties may consent to any number not less than four. Such consent shall be entered by the Clerk in the minutes of the trial.

Jury, how drawn.

SEC. 161. As soon as the jury is completed, an oath or affirmation shall be administered to the jurors, in substance that they, each of them, will well and truly try the matter in issue between——, the plaintiff, and——, the defendant, and that they will have no communication with any person on the subject matter of the trial, except with a fellow juror, until they have agreed upon their verdict, or been discharged by the Court, and a true verdict rendered according to the law and the evidence. If the jury shall retire to deliberate upon their verdict, they shall be placed in charge of the Territorial Marshal, or the Sheriff of the County, who shall keep them separate and apart from all others, and from separating, until they shall have agreed upon their verdict, or been discharged by the Court. If necessary, it shall be the duty of the Territorial Marshal, or the Sheriff of the County, at the charge of the parties to the action, to provide food for the jury.

To be sworn, form of oath.

SEC. 162. Either party may challenge the jurors; but when there are several parties on either side, they shall join in a challenge before it can be made, unless the Court otherwise order or direct. The challenges shall be to individual jurors, and

Challenge.

shall be peremptory or for cause. Each party shall be entitled to six peremptory challenges.

Challenge for
cause.

SEC. 163. Challenges for cause may be taken on one or more of the following grounds: First—A want of any of the qualifications prescribed by statute to render a person competent as a juror. Second—Consanguinity within the third degree to either party. Third—Standing in the relation of debtor or creditor, guardian and ward, master and servant, employer and clerk, or principal and agent to either party; or being a member of the family of either party; or a partner, or united in business with either party; or being security on any bond or obligation for either party. Fourth—Having served as a juror or been a witness on a previous trial between the same parties for the same cause of action; or being then a witness therein. Fifth—Pecuniary interest on the part of the juror in the event of the action, or in the main question involved in the action; except the interest of the juror as a member or citizen of a municipal corporation. Sixth—Having formed or expressed an unqualified opinion or belief as to the merits of the action; or the main question involved therein; *provided*, that the reading of newspaper accounts of the subject matter before the Court shall not disqualify a juror either for bias or opinion. Seventh—The existence of a state of mind in the juror, evincing enmity against, or bias to either party.

Challenge,
how tried,

SEC. 164. Challenges for cause shall be tried by the Court. The juror challenged, and any other person may be examined as a witness on the trial of the challenge.

ARTICLE II.

Conduct of the Trial.

Juror becoming
sick.

SEC. 165. If, after the impanneling of the jury, and before a verdict, a juror become sick, so as to be unable to perform his duty, the Court may order him to be discharged. In that case the trial shall proceed with the other jurors: *provided*, the jury be not reduced to less than two-thirds of the original number sworn. Should the jury be reduced to a less number than two-thirds from such cause, the remaining jurors shall be discharged, and a new jury may then or afterwards be impaneled.

Charge to
jury.

SEC. 166. In charging the jury, the Court shall state to them such matters of law as it thinks necessary for their information in giving their verdict, and shall give, or refuse to give, such other instructions, upon points of law, as either party may request; and if it state the testimony of the case, it shall also inform the jury that they are the exclusive judges of all questions of fact. The Court shall furnish to either party, at the time, upon request, a statement in writing of the points of law contained in the charge, or shall sign, at the time, a statement of such points prepared and submitted by the counsel of either party.

SEC. 167. After hearing the charge, the jury may either

decide in Court, or retire for deliberation. If they retire, they shall be kept together in a room or some other convenient place provided for them, under the charge of one or more officer, until they agree upon their verdict, or are discharged by the Court. The officer shall, to the utmost of his ability, keep the jury separate from other persons; he shall not suffer any communication to be made to them, or make any himself, unless by order of the Court, except to ask them if they have agreed upon their verdict; and he shall not, before the verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon.

Jury may decide in Court, or retire.

Duty of officer

SEC. 168. Upon retiring for deliberation, the jury may take with them all papers (except depositions) which have been received as evidence in the cause, or copies of such papers as ought not, in the opinion of the Court, to be taken from the person having them in possession; and they may also take with them notes of the testimony, or other proceedings on the trial, taken by themselves or any of them; but none taken by any other person.

What papers jury may take.

SEC. 169. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into Court. Upon their being brought into Court, the information required shall be given in the presence of, or after notice to, the parties or counsel.

Return of jury for instructions.

SEC. 170. In all cases where a jury are discharged, or prevented from giving a verdict by reason of accident or other cause during the progress of the trial, or after the cause is submitted to them, the action may be again tried, immediately or at a future time, as the Court shall direct.

Proceedings when jury discharged without verdict.

SEC. 171. While the jury are absent, the Court may adjourn from time to time in respect to other business, but it shall nevertheless be deemed open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury discharged. The Court may direct the jury to bring in a sealed verdict at the opening of the Court, in case of an agreement during a recess or adjournment for the day. A final adjournment of the Court for the term shall discharge the jury.

Final adjournment, jury discharged.

SEC. 172. When the jury have agreed upon their verdict they shall be conducted into Court by the officer having them in charge. Their names shall be called, and they shall be asked by the Court, or the Clerk, whether they have agreed upon their verdict; and if the foreman answer in the affirmative, they shall deliver the same to the Clerk.

Verdict.

SEC. 173. If the verdict be informal or insufficient in not covering the whole issue or issues submitted, the verdict may be corrected by the jury under the advice of the Court, or the jury may again be sent out.

May be corrected.

SEC. 174. When the verdict is given, which must be by unanimous agreement, except by the consent of parties, it shall be read aloud by the Clerk in open Court, and if not

How recorded.

informal or insufficient, it shall immediately be recorded in full in the minutes.

ARTICLE 3.

The Verdict.

Verdict,
kind of.

SEC. 175. The verdict of the jury is either general or special. A general verdict is that by which they pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant; a special verdict is that by which the jury find the facts only, leaving the judgment to the Court. The special verdict shall present the conclusions of fact as established by the evidence, and not the evidence to prove them; and those conclusions of fact shall be so presented as that nothing shall remain to the Court but to draw from them conclusion of law. All verdicts shall be given in writing and be signed by the foreman of the jury.

When to find
amount of
recovery.

SEC. 176. When a verdict is found for the plaintiff, in an action for the recovery of money, or for the defendant, when a counter claim for the recovery of money is established exceeding the amount of the plaintiff's claim as established, the jury shall also find the amount of the recovery.

In action to
recover speci-
fic property.

SEC. 177. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant, by his answer, claim a return thereof, the jury, if their verdict be in favor of the plaintiff, or if, being in favor of the defendant, they also find that he is entitled to a return thereof, shall find the value of the property, and may, at the same time, assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the taking or detention of such property.

Entry in
minutes.

SEC. 178. Upon receiving a verdict, an entry shall be made by the Clerk in the minutes of the Court, specifying the time of trial, the names of the jurors and witnesses, and the verdict; and where a special verdict is found, either the judgment rendered thereon, or if the case be reserved for argument or further consideration, the order thus reserving it.

CHAPTER 5.—TRIAL BY COURT.

Jury trial may
be waived.

SEC. 179. Trial by jury may be waived by the several parties to an issue of fact in actions arising on contract, and with the assent of the Court in other actions, in the manner following: First—By failing to appear at the trial. Second—By written consent, in person, or by attorney, filed with the Clerk. Third—By oral consent in open Court, entered in the minutes.

Decisions of
Court.

SEC. 180. Upon the trial of an issue of fact by the Court, its decision shall be given in writing, and filed with the Clerk, within ten days after the trial shall have taken place. In giving the decision, the facts found and the conclusions of law

shall be separately stated. Judgment upon the decision shall be entered accordingly.

SEC. 181. On a judgment upon an issue of law, if the taking of an account be necessary to enable the court to complete the judgment, a reference may be ordered. Chancery cases may be tried by the Court, with or without the finding of a jury, upon issues designated by the Court.

Chancery cases.

CHAPTER 8.—OF REFERENCES AND TRIAL BY REFEREE.

SEC. 182. A reference may be ordered upon the agreement of the parties, filed with the Clerk, or entered in the minutes. First—to try any or all of the issues in an action or proceeding, whether of fact or of law, and to report a judgment thereon. Second—To ascertain a fact necessary to enable the Court to proceed and determine the case.

Order of reference.

SEC. 183. When the parties do not consent, the Court may, upon the application of either, or of its own motion, direct a reference in the following cases: First—When the trial of an issue of facts requires the examination of a long account on either side; in which case the referees may be directed to hear and decide the whole issue, or report upon any specific question of fact involved therein. Second—When the taking of an account is necessary for the information of the Court before judgment, or for carrying a judgment or order into effect. Third—When a question of fact, other than upon the pleadings, arises upon motion or otherwise in any stage of the action; or, Fourth—When it is necessary for the information of the Court in a special proceeding.

Same.

SEC. 184. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the parties do not agree, the Court or Judge shall appoint one or more referees, not exceeding three, who reside in the County, in which the action or proceeding is triable, and against whom there is no legal objection.

Number of persons to whom ordered

SEC. 185. Either party may object to the appointment of any person as referee on one or more of the following grounds: First—A want of any of the qualifications prescribed by statute to render a person competent as a juror. Second—Consanguinity within the third degree to either party. Third—Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent to either party, or being a member of the family of either party, or a partner in business with either party, or being security on any bond or obligation for either party. Fourth—Having served as a juror or being a witness on any trial between the same parties for the same cause of action, or being then a witness in the cause. Fifth—Pecuniary interest on the part of such person, in the event of the action, or in the main question involved in the action. Sixth—Having formed or expressed an unqualified opinion or belief as to the merits of the action.

Referees, objection to appointment.

Seventh.—The existence of a state of mind in such person evincing enmity against or bias to either party.

Objections,
how disposed
of.

SEC. 186. The objections taken to the appointment of any person as referee shall be heard and disposed of by the Court. Affidavits may be read and any person examined as a witness as to such objections.

Report of
referee.

SEC. 187. The referees shall make their report within ten days after the testimony before them is closed. Their report upon the whole issue shall stand as the decision of the Court, and upon filing the report with the Clerk of the Court, judgment may be entered thereon in the same manner as if the action had been tried by the Court. The decision of the referees may be excepted to and reviewed in like manner as if made by the Court. When the reference is to report the facts, the report shall have the effect of a special verdict.

CHAPTER 7.—GENERAL PROVISIONS RELATING TO TRIALS.

ARTICLE I.

Exceptions.

Exception
defined.

SEC. 188. An exception is an objection taken at the trial to a decision upon a matter of law, whether such trial be by jury, Court or referees, and whether the decision be made during the formation of a jury, or in the admission of evidence, or in the charge to a jury, or at any other time from the calling of the action for trial to the rendering of the verdict or decision. But no exception shall be regarded on a motion for a new trial, or on an appeal, unless the exception be material, and affect the substantial rights of the parties.

How taken.

SEC. 189. The point of the exception shall be particularly stated, and may be delivered in writing to the Judge, or, if the party require it, shall be written down by the Clerk. When delivered in writing, or written down by the Clerk, it shall be made conformable to the truth, or be at the time corrected until it is so made conformable. When not delivered in writing or written down as above, it may be entered in the Judge's minutes and afterwards settled in a statement of the case, as provided in this Act: *provided*, that if the Judge shall in any case refuse to allow an exception in accordance with the facts, any party aggrieved thereby may petition the Supreme Court for leave to prove the same, and shall have the right so to do, in such mode and manner, and according to such regulations as the Supreme Court may by rules impose, and such exceptions as are allowed by said Supreme Court shall become a part of the record of the cause.

Provided.

Same.

SEC. 190. No particular form of exception shall be required. The objection shall be stated with so much of the evidence, or other matter, as is necessary to explain it, but no more, and the whole as briefly as possible.

When implied.

SEC. 191. When a cause has been tried by the Court, or by referees, and the decision or report is not made immediately after the closing of the testimony, the decision or report shall

be deemed excepted to on motion for a new trial or on appeal, without any special notice that an exception is taken thereto.

ARTICLE 2.

New Trials.

SEC. 192. A new trial is a re-examination of an issue of fact in the same Court after a trial and decision by a jury, Court, or referees. New trial.

SEC. 193. The former verdict or other decision may be vacated and a new trial granted on the application of the party aggrieved for any of the following causes materially affecting the substantial rights of such party: First—Irregularity in the proceeding of the Court, jury, or adverse party, or any order of the Court, or abuse of discretion by which either party was prevented from having a fair trial. Second—Misconduct of the jury. Third—Accident, or surprise, which ordinary prudence could not have guarded against. Fourth—Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial. Fifth—Excessive damages. Sixth—Insufficiency of the evidence to justify the verdict or other decision; or that it is against law. Seventh—Error in law occurring at the trial and accepted to by the party making the application. For what causes granted

SEC. 194. When the application is made for a cause mentioned in the first, second, third and fourth subdivisions of the last Section, it shall be made upon affidavit; for any other cause it shall be made upon a statement prepared, as provided in the next Section. Application, how made.

SEC. 195. The party intending to move for a new trial shall give notice of the same as follows: When the action has been tried by a jury, within five days after the rendition of the verdict, and when the action has been tried by the Court or by a referee within ten days after receiving written notice of the rendering of the decision of the Judge, or of the filing the report of the referee. The notice shall designate generally the grounds upon which the motion will be made. Within five days after giving such notice, the said party shall prepare and file with the Clerk the affidavit or statement required by the last Section. A copy of the affidavit shall on the same day be served on the adverse party. The party preparing the statement shall number the pages and lines thereof, and after having filed the same with the Clerk, and had such filing entered and indorsed, shall serve the same on the adverse party on the same day, who may propose amendments thereto, referring to the page and line of the statement, and shall within five days after the service on him of the statement, file his amendment with the Clerk, and after having such filing entered and indorsed, shall on the same day serve the same with the statement upon the moving party, who shall within five days thereafter give written notice to the adverse party if Prerequisites, to motion for.

he declines admitting the amendments or they shall be deemed accepted. At any time thereafter either party may have the statement settled by the Judge or referee upon two days' notice thereof to the other party. If no affidavit or statement be filed within five days after the notice of new trial, the right to move for a new trial shall be deemed waived. When the notice designates as the ground upon which the motion will be made the insufficiency of the evidence, to justify the verdict or other decision, the statement shall specify the particulars in which such evidence is alleged to be insufficient. When the notice designates as the ground of the motion; error in law occurring at the trial and excepted to by the moving party, the statement shall specify the particular errors upon which the party will rely. If no such specifications be made, the statement shall be disregarded. The statement shall contain so much of the evidence or reference thereto as may be necessary to explain the particular points thus specified and no more. When the statement is agreed to it shall be accompanied with the certificate either of the parties themselves in fact, or their attorney, that the same has been agreed upon and is correct. When settled by the Judge or referee, it shall be accompanied with his certificate that the same has been allowed by him and is correct. When no amendments have been filed the statement shall be accompanied with the certificate of the Clerk of that fact. On the argument, reference may also be made to the pleadings, depositions and documentary evidence on file, testimony taken and written out by a short-hand reporter, authorized by the Court to take the same, and the minutes of the Court. If the application be made upon affidavits filed, the adverse party may use counter affidavits on the hearing. Any counter affidavits shall be filed with the Clerk and copies served on the moving party, at least two days previous to the hearing. The affidavits and counter affidavits, or the statement thus used, in connection with such pleadings, depositions, documentary evidence on file, testimony taken by a reporter and minutes of the Court as are read or referred to on the hearing, shall constitute, without further statement, the papers to be used on appeal from the order granting or refusing the new trial. To identify the affidavits, it shall be sufficient for the Judge or Clerk to indorse them at the time as having been read or referred to on the hearing. To identify any depositions, documentary evidence on file, testimony taken by a reporter, or minutes of the Court read or referred to on the hearing, it shall be sufficient, that the Judge designate them, as having been read or referred to in his certificate to be for that purpose by him made thereon. The several periods of time limited may be enlarged by the written agreement of the parties, or upon good cause shown by the Court, or the Judge, before whom the cause was tried.

SEC. 196. The application for a new trial shall be made at the earliest period practicable after filing the affidavit or statement, and the Court or Judge granting or refusing a new trial shall state in writing generally the grounds upon which

CHAPTER 8.—THE MANNER OF GIVING AND ENTERING JUDGMENT.

SEC. 197. When trial by jury has been had, judgment shall be entered by the Clerk in conformity to the verdict, within twenty-four hours after the rendition of the verdict, unless the Court order the case to be reserved for argument or further consideration, or grant a stay of proceedings.

Judgment,
how and when
entered.

SEC. 198. When the case is reserved for argument or further consideration, as mentioned in the last Section, it may be brought by either party before the Court for argument.

Argument of
case.

SEC. 199. If a counter claim, established at the trial, exceed the plaintiff's demand, so established, judgment for the defendant shall be given for the excess; or, if it appear that the defendant is entitled to any other affirmative relief, judgment shall be given accordingly.

Counter
claim.

SEC. 200. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or the value thereof, in case a delivery cannot be had, and damages for the detention, or the value of the use thereof. If the property have been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value thereof, in case a return cannot be had, and damages for taking and withholding the same, or the value of the use thereof. In an action on a contract or obligation for the direct payment of money, judgment for the plaintiff, whether the same be by default or after verdict, or decision of the Court or referee, shall be for money only. And in an action against any person for the recovery of money received by such person in a fiduciary capacity, or to the use of another, judgment for the plaintiff, whether the same be by default or after verdict, or decision of the Court or referee, may be made payable in the same kind of money or currency so received by such person.

Action for
recovery of
personal
property, etc.

SEC. 201. The Clerk shall keep among the records of the Court a book for the entry of judgment, to be called the "Judgment Book," in which each judgment shall specify clearly the relief granted, or other determination of the action.

Judgment
Book.

SEC. 202. If a party die after a verdict or decision upon any issue of fact, and before judgment, the Court may nevertheless render judgment thereon. Such judgment shall not be a lien on the real property of the deceased party, but shall be payable in the course of administration upon his estate.

Death of party

SEC. 203. Immediately after entering the judgment the Clerk shall attach together and file the following papers, which shall constitute the judgment roll: First—In case the complaint be not answered by any defendant, the summons, with the affidavit or proof of service, and the complaint, with a memorandum indorsed on the complaint that the default of the defendant in not answering was entered, and a copy of the judgment. Second—In all other cases the summons, plead-

Judgment
roll.

ings, verdict and a copy of the judgment, and any orders relating to a change of the parties.

Lien of
Judgment.

SEC. 204. Immediately after filing a judgment roll the Clerk shall make the proper entries of the judgment, under appropriate heads, in the docket kept by him, and from the time the judgment is docketed it shall become a lien upon all the real property of the judgment debtor not exempt from execution in the county, owned by him at the rendition of the judgment, in his own right. The lien shall continue for two years, unless the judgment be previously satisfied. But the time during which the execution of the judgment is suspended by appeal or action of the Court or defendant, shall not be computed.

Docket, how
kept.

SEC. 205. The docket mentioned in the last Section is a book which the Clerk shall keep in his office with each page divided into columns: judgment debtors; judgment creditors; judgment; time of entry; where entered in judgment book; appeals; when taken; judgment of Appellate Court; satisfaction of judgment; when entered. If judgment be for the recovery of money or damages, the amount shall be stated in the docket under the head of judgment; if the judgment be for any other relief, a memorandum of the general character of the relief granted shall be stated. The names of the defendants shall be entered in the docket in alphabetical order.

To be open
for inspection.

SEC. 206. The docket kept by the Clerk shall be open at all times during office hours for the inspection of the public, without charge; and it shall be the duty of the Clerk to arrange the several dockets kept by him in such a manner as to facilitate their inspection.

Judgment
lien in other
counties.

SEC. 207. A transcript of the original docket, certified by the Clerk, may be filed with the Recorder of any other County, and, from the time of the filing the judgment, shall become a lien upon all the real property of the judgment debtor not exempt from execution in such County, owned by him at the rendition of the judgment in his own right. The lien shall continue for two years, unless the judgment be previously satisfied. But the time during which the execution of the judgment is suspended by appeal, or action of the Court or defendant, shall not be computed.

Duration of
lien.

Satisfaction
of judgment,
how entered.

SEC. 208. Satisfaction of a judgment may be entered in the Clerk's docket upon an execution returned satisfied, or upon an acknowledgment of satisfaction filed with the Clerk, made in the manner of an acknowledgment of a conveyance of real property, by the judgment creditor, or within one year after the judgment, by the attorney, unless a revocation of his authority be previously filed. Whenever a judgment shall be satisfied in fact, otherwise than upon execution, it shall be the duty of the party or attorney to give such acknowledgment, and upon motion the court may compel it, or may order the entry of satisfaction to be made without it.

TITLE VII.

Of the Execution of the Judgment in Civil Actions.

CHAPTER 1.—THE EXECUTION.

SEC. 209. The party in whose favor judgment is given, may at any time within three years after the entry thereof, issue a writ of execution for its enforcement, as prescribed in this Chapter. Execution may issue.

SEC. 210. The writ of execution shall be issued in the name of the Territory of Utah; sealed with the seal of the Court, and subscribed by the Clerk, and shall be directed to the Territorial Marshal, or the Sheriff of the County, and shall intelligibly refer to the judgment, stating the Court, the County where the judgment roll is filed, the name of the parties, the judgment, and if it be for money, the amount thereof, and the amount actually due thereon, and if made payable in a specified kind of money or currency as provided in Section Two hundred, the execution shall also state the kind of money or currency in which the judgment is payable, and shall require substantially as follows: First—If it be against the property of the judgment debtor it shall require the officer to satisfy the judgment, with interest, out of the personal property of such debtor, and if sufficient personal property cannot be found, then out of his real property; or if the judgment be a lien upon real property belonging to him on the day when the judgment was docketed, or if the execution be issued to a County other than the one in which the judgment was recovered, on the day when the transcript of the docket was filed in the office of the Recorder of such County, stating such day. Second—If it be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the officer to satisfy the judgment with interest out of such property. Third—If it be against the person of the judgment debtor, it shall require the officer to arrest such debtor, and commit him to the jail of the County until he pay the judgment with interest or be discharged according to law. Fourth—If it be issued on a judgment made payable in a specified kind of money or currency as provided in Section Two Hundred, it shall also require the officer to satisfy the same in the kind of money or currency in which said judgment is made payable, and the officer shall refuse payment in any other kind of money or currency; and in case of levy and sale of the property of the judgment debtor, he shall refuse payment from any purchaser at such sale in any other kind of money or currency than that specified in the execution. The officer collecting money or currency in the manner required by this Act, shall pay to the plaintiff or party entitled to recover the same, the same kind of money or currency received by him, and in case of neglect or refusal to do so, he may be liable on his official bond to the judgment creditor in any sum not exceeding

Form of writ.

double the amount of money so collected. Fifth—If it be for the delivery of the possession of real or personal property, it shall require the officer to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may at the same time require the officer to satisfy any costs, damages, rents, or profits, recovered by the same judgment out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered, to be specified therein; if a delivery thereof cannot be had, and if sufficient personal property cannot be found, then out of real property, as provided in the first subdivision of this Section.

Judgment on
joint contract.

SEC. 211. When a writ of execution is issued on a judgment recovered against two or more persons in an action upon a joint contract, in which action all the defendants were not served with summons, or did not appear, it shall direct the Territorial Marshal, or the Sheriff of the County, to satisfy the judgment out of the joint property of all the defendants and the individual property only of the defendants who were served; or who appeared in the action. In other respects the writ shall contain the directions specified in Subdivisions One and Four of the last Section.

When
returnable.

SEC. 212. The execution may be returnable at any time, not less than ten, nor more than ninety days after its receipt by the officer to the Clerk with whom the judgment roll is filed.

Payment of
money.

SEC. 213. When a judgment requires the payment of money, or the delivery of real or personal property, the same shall be enforced in those respects by execution.

When it
requires
performance
of other act.

SEC. 214. Where it requires the performance of any other act, a certified copy of the judgment may be served upon the party against whom it is given, or upon the person or officer who is required thereby, or by law, to obey the same and his obedience thereto enforced.

After death
of party.

SEC. 215. Notwithstanding the death of a party after the judgment, execution thereon may be issued, in case of the death of the plaintiff, the same as if he were living, upon the application of his executor, or administrator, or successor in interest, to the Court in which the judgment was rendered; and in case of the death of the defendant, if the judgment be for the recovery of real or personal property, execution may be issued against such property, in the same manner and with the same effect as if he were still living.

May issue
to different
counties.

SEC. 216. Where the execution is against the property of the judgment debtor, it may be issued to the Territorial Marshal, or the Sheriff of any County in the Territory. Where it requires the delivery of real or personal property, it shall be issued to the Territorial Marshal, or the Sheriff of the County, where the property, or some part thereof, is situated. Executions may be issued at the same time to different Counties.

Property
liable to
execution.

SEC. 217. All goods, chattels, moneys, and other property, real and personal, of the judgment debtor, or any interest therein of the judgment debtor not exempt by law,

and all property and rights of property seized and held under attachment in the action, shall be liable to execution. Shares and interests in any corporation or company, and debts and credits, and other property not capable of manual delivery, may be attached in execution in like manner as upon writs of attachment. Gold dust and bullion shall be returned by the officer as so much money collected, at its current value, without exposing the same to sale. Until a levy, personal property shall not be affected by the execution.

SEC. 218. If the property levied on be claimed by a third person as his property, the Territorial Marshal, or the Sheriff of the County, shall summon from the County six persons qualified as jurors between the parties, to try the validity of the claim. He shall also give notice of the claim and of the time of trial to the plaintiff, who may appear and contest the claim before the jury. The jury and the witnesses shall be sworn by the Officer, and if their verdict be in favor of the claimant, the Officer may relinquish the levy, unless the judgment creditor gives him a sufficient indemnity for proceeding thereon. The fees of the jury, Officer and the witnesses, shall be paid by the claimant; if the verdict be against him; otherwise by the plaintiff.

Proceedings where property is claimed by third party.

SEC. 219. The following property shall be exempt from execution, except as herein otherwise provided: First—Chairs, tables, desks and books, to the value of one hundred dollars, belonging to the judgment debtor. Second—Necessary household, table and kitchen furniture, belonging to the judgment debtor, including stoves, not to exceed one stove for every five persons of the family, stove pipe and stove furniture, wearing apparel: one bedstead, one bed and the necessary bedding for every two persons in the family, and provisions and fuel for the family sufficient for sixty days. Third—The farming utensils or implements of husbandry of the judgment debtor, also, two oxen, or two horses, or two mules, and their harness, one cow and calf for every five persons in the family, one cart or wagon, and food for such oxen, horses, cows or mules for sixty days; also, all seed grain, or vegetables actually provided, reserved, or on hand for the purpose of planting or sowing at any time within the ensuing six months, not exceeding in value one hundred dollars. Fourth—The tools, tool chest and implements of a mechanic or artisan, necessary to carry on his trade, the instruments and chests of a surgeon, physician, surveyor, and dentist, necessary to the exercise of their professions, with their scientific and professional libraries, and the law libraries of an attorney or counselor, and the libraries of ministers of the gospel. Fifth—The tent or cabin of a miner, including a table, camp stools, bed and bedding, and necessary tools used in mining, not exceeding the value of four hundred dollars, with provisions necessary to his support for thirty days. Sixth—Two oxen, or two horses, or two mules and their harness, and one cart or wagon, by the use of which a cartman, teamster or other laborer habitually earns his living, and food for such oxen, horses or mules for sixty days; and a

Property exempt from execution.

horse, harness and vehicle used by a physician, surgeon or minister of the gospel in making his professional visits. Seventh—One sewing machine, not exceeding in value one hundred dollars, in actual use by the debtor or his family. If the debtor be head of a family, there shall be a further exemption from execution of five head of sheep and the wool therefrom, for every person in his family, two hogs and three pigs under three months old, and the necessary food for all such animals for sixty days. All flax raised by the debtor and the manufactures therefrom, and all cloth manufactured in the family of the debtor, for their own use. All spinning wheels and looms and other instruments of domestic labor kept for family use. The earnings of such debtor for his personal service, or those of his family, at any time within sixty days next preceding the levy are also exempt from execution. Eighth—All fire engines, hooks and ladders, with the carts, trucks and carriages, hose, buckets, implements and apparatus thereto appertaining, and all furniture and uniforms of any fire company or department now existing, or which may be, under the laws of this Territory, hereafter organized. Ninth—All arms, ammunition, uniforms and accoutrements, required by law to be kept by any person. Tenth—All court houses, jails, public offices and buildings, school houses, houses of public worship, lots, grounds and personal property appertaining thereto; the fixtures, furniture, books, papers, and appurtenances belonging and pertaining to the court house, jail and public offices belonging to any County in this Territory, or for the use of schools or houses of public worship, and all cemeteries, public squares, parks and places, public buildings, town halls, public markets, buildings for the use of the fire departments and military organizations, and the lots and grounds thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by such town or city to health, ornament, or public use, or for the use of any fire or military company, now existing, or which may be, under the laws of this Territory hereafter organized. Eleventh—If the debtor be the head of the family, there shall be a further exemption of a homestead, to be selected by the debtor, consisting of lands, together with the appurtenances and improvements thereon, not exceeding in value one thousand dollars for the judgment debtor, and the further sum of two hundred and fifty dollars for each member of the family. If the homestead selected by the debtor is of a greater value than is exempted under this Section, it shall be optional with the judgment debtor to permit the same to be partitioned, or to be sold, and to receive in money the value of the homestead as provided in this Section. If the debtor so elect, the homestead may be sold as other lands are sold on execution, and, after paying the debtor the value of the homestead, the balance of the money shall be applied upon the judgment; *provided*, that the homestead shall not be sold if the Officer do not receive a bid for a greater amount than the value of the homestead exempted in this Section. If sold on the judgment,

the money paid the debtor for the homestead shall be exempt from that or any other execution. If the Officer having the execution, and the judgment debtor, cannot agree as to the value of the homestead, or the partition thereof or as to the quantity and value of any of the articles of personal property in this Section exempted, the Officer shall select one person and the debtor another person, both being householders of the vicinity, to whom the Officer shall administer an oath, to appraise and set apart the articles of personal property, if upon these they disagree, or if the disagreement relates to the value of the homestead, or to the partition thereof, then to report to the Officer, if they can agree, their appraisal of the property selected for the homestead, and if the debtor elect to have the property partitioned, it shall be the duty of the appraiser to set apart such a homestead as the judgment debtor shall elect and be entitled to under the provisions of this Section. In case of the disagreement of the appraisers, they shall choose a third person, who shall also be sworn; and the decision of any two of said appraisers, when made, shall be final. The property not set apart as a homestead shall be subject to sale under execution, the proceeds to be applied on the judgment. Twelfth—No article or species of property mentioned in this Section shall be exempt from execution issued upon a judgment recovered for its price, or a mechanic's or laborer's lien, or upon a mortgage thereon. Thirteenth—none of the exemptions herein made are intended for the benefit of non-residents, but their property is liable to execution, with the exception of the ordinary wearing apparel; but any person coming within the Territory, with the intention of remaining, is a resident within the meaning of this Act, and nothing herein shall be so construed as to exempt the property of any person or persons about to depart from the Territory with the intention of removing their effects therefrom: *provided*, that nothing in this Act shall be so construed as exempting any real or personal property from sale for taxes. In this Section, the word "family" shall be construed to include all persons belonging to the household of the judgment debtor, or dependant upon him for subsistence, but shall not include transient persons, boarders, or hired servants.

Sec. 220. The Territorial Marshal, or the Sheriff of the County, shall execute the writ against the property of the judgment debtor, by levying on a sufficient amount of unexempted property, if there be sufficient, collecting, or selling the things in action, and selling the other property, and paying to the plaintiff, or his attorneys, so much of the proceeds as will satisfy the judgment, or depositing the amount with the Clerk of the Court. Any excess in the proceeds over the judgment, and the fees of the Officer shall be returned to the judgment debtor. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and the fees of the Officer within his view, he shall levy only on such part of the property as the judgment debtor may indicate; *provided*, that the judgment debtor may indicate at the time

Satisfaction
of.

of the levy such part; and *provided*, that the property indicated be amply sufficient to satisfy such judgment and fees.

Sale of
property.

SEC. 221. Before the sale of property on execution, notice thereof shall be given as follows: First—In case of perishable property, by posting written notice of the time and place of sale in three public places of the precinct, or city where the sale is to take place, for such a time as may be reasonable, considering the character and condition of the property. Second—In case of other personal property; by posting a similar notice in three public places of the precinct, or city where the sale is to take place, not less than five nor more than ten days. Third—In case of real property, by posting a similar notice, particularly describing the property, for twenty days, in three public places of the precinct, or city, where the property is situated, and also where the property is to be sold.

Penalty for
selling
without
notice.

SEC. 222. An Officer selling without the notice prescribed by the last Section, shall forfeit a sum not to exceed five hundred dollars, at the discretion of the Court, to the aggrieved party, in addition to his actual damages; and a person wilfully taking down or defacing the notice posted, if done before the sale or the satisfaction of the judgment, (if the judgment be satisfied before sale) shall forfeit to the aggrieved party, a sum not to exceed five hundred dollars, at the discretion of the Court.

Sales, how
made.

SEC. 223. All sales of property under execution, shall be made at auction, to the highest bidder, and shall be made between the hours of nine in the morning, and five in the afternoon. After sufficient property has been sold to satisfy the execution, no more shall be sold. The Officer holding the execution shall not become a purchaser, or be interested in any purchase at such sale. When the sale is of personal property, capable of manual delivery, it shall be in view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, and consisting of several known lots or parcels, they shall be sold separately, or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion shall be thus sold. All sales of real property shall be made at the Court House of the County in which the property, or some part thereof, is situated. The judgment debtor, if present at the sale, may also direct the order in which the property, real or personal, shall be sold. When such property consists of several known lots or parcels, or of articles which can be sold to advantage separately, the officer shall be bound to follow such directions.

Purchaser
refusing to
pay property
to be resold.

SEC. 224. If a purchaser refuse to pay the amount bid by him for property struck off to him at a sale under execution, the Officer may again sell the property to the highest bidder, after giving the notice herein before provided; and if any loss be occasioned thereby from the purchaser refusing to pay his bid, the Officer may recover the amount of such loss, with costs, for the benefit of the party aggrieved, by motion, upon previous notice of five days to such purchaser, before any Court of competent jurisdiction.

SEC. 225. Such Court shall proceed in a summary manner, in the hearing and disposition of such motion, and give judgment, and issue execution therefor forthwith, but the refusing purchaser may claim a jury. And the same proceedings may be had against any subsequent purchaser who shall refuse to pay, and the Officer may, in his discretion, thereafter reject the bid of any person so refusing.

Proceedings to enforce payment of loss of resale.

SEC. 226. The two preceding Sections shall not be construed to make the Officer liable for any more than the amount bid by the second, or subsequent purchaser, and the amount collected from the purchaser refusing to pay.

Amount for which officer is liable.

SEC. 227. When the purchaser of any personal property, capable of manual delivery, shall pay the purchase money, the Officer making the sale shall deliver to the purchaser the property, and if desired, shall execute and deliver to him a certificate of the sale and payment. Such certificate shall convey to the purchaser all the right, title and interest which the debtor had in and to such property, on the day the execution was levied.

Certificate of sale, etc.

SEC. 228. When the purchaser of any personal property not capable of manual delivery, shall pay the purchase money, the Officer making the sale shall execute and deliver to the purchaser a certificate of sale and payment. Such certificate shall convey to the purchaser all right, title and interest which the debtor had in and to such property on the day the execution was levied.

Same.

SEC. 229. Upon a sale of real property, the purchaser shall be substituted to and acquire all the right, title, interest and claim of the judgment debtor thereto; and when the estate is less than a leasehold of two years unexpired term, the sale shall be absolute. In all other cases, the real property shall be subject to redemption, as provided in this Chapter. The Officer shall give to the purchaser a certificate of the sale, containing: First—A particular description of the real property sold. Second.—The price bid for each distinct lot or parcel. Third.—The whole price paid. Fourth.—When subject to redemption, it shall be so stated; and when the judgment, under which the sale has been made, is made payable in a specified kind of money or currency, the certificate shall also state the kind of money, or currency, in which such redemption may be made, which shall be the same as that specified in the judgment. A duplicate of such certificate shall be filed by the Officer in the office of the Recorder of the County.

Sale of real estate, when absolute.

SEC. 230. Property sold subject to redemption, as provided in the last Section, or any part sold separately, may be redeemed in the manner hereinafter provided by the following persons, or their successors in interest: First—The judgment debtor, or his successor in interest, in the whole or any part of the property. Second—A creditor having a lien by judgment, or mortgage, on the property sold, or on some share or part thereof, subsequent to that on which the property was sold. The persons mentioned in the second subdivision of this Section are, in this Chapter, termed redemptioners.

When subject to redemption.

Redemption,
how made.

SEC. 231. The judgment debtor, or a redemptioner, may redeem the property from a purchaser within six months after the sale, on paying the purchaser the amount of his purchase, in the kind of money or currency specified in the judgment, if any be specified, with six per cent. thereon in addition, together with the amount of any assessment, or taxes, which the purchaser may have paid thereon after the purchase, and interest on such amount; and if the purchaser be also a creditor, having a lien prior to that of a redemptioner, other than the judgment under which the purchase was made, the amount of such lien, with interest.

Same.

SEC. 232. If the property be so redeemed by a redemptioner, either the judgment debtor, or another redemptioner may, within sixty days of his last redemption, again redeem it from the last redemptioner, on paying the sum paid on such last redemption, with three per cent. thereon in addition, and the amount of any assessment, or taxes, which the said last redemptioner may have paid thereon, after the redemption by him, with interest on such amount, and in addition, the amount of any liens held by said last redemptioner prior to his own, with interest; *provided*, that the judgment under which the property was sold need not be paid as a lien. The property may be again, and as often as the debtor or a redemptioner is so disposed, redeemed from any previous redemptioner within sixty days after the last redemption, with three per cent. thereon in addition, and the amount of any assessments, or taxes, which the last previous redemptioner paid after the redemption by him, with interest thereon, and the amount of any liens other than the judgment under which the property was sold, held by the said last redemptioner previous to his own, with interest. Notice of redemption shall be given to the Territorial Marshal, or the Sheriff of the County. If no redemption be made within six months after the sale, the purchaser, or his assignee, shall be entitled to a conveyance, or if the property be so redeemed whenever sixty days have elapsed, and no other redemption has been made, and notice thereof given, and the time for the redemption shall have expired, the last redemptioner, or his assignee, shall be entitled to a deed from the officer. If the debtor redeem at any time before the time for the redemption expires, the effect of the sale shall be terminated and he be restored to his estate.

Same.

SEC. 233. The payment mentioned in the last two sections may be made to the purchaser, or redemptioner, as the case may be, or for him to the officer who made the sale; and a tender of the money shall be equivalent to payment so far as to effect a redemption of the property; and all such payments, or tender, shall be made in the kind of money, or currency, in which the last redemption was made, and in which the lien of such redemption was payable. A person desiring to redeem may demand of the purchaser, or last redemptioner, or his attorney in fact, if he be absent from the county, in which the property is situate, a statement in writing of all his claims and liens against the property to be paid on redemption,

specifying each item; and if he fail to furnish said statement within three days, then it shall only be necessary to a redemptioner to pay, or tender the amount of the bid or the last redemption, as the case may be, with the per centage allowed added thereto.

SEC. 234. A redemptioner shall produce to the officer, or person, from whom he seeks to redeem, and serve with his notice to the officer: First—A copy of the docket of the judgment under which he claims the right to redeem, certified by the Clerk of the Court, where the judgment is docketed; or if he redeem upon a mortgage, or other lien, a note of the record thereof certified by the Recorder. Second—A copy of an assignment necessary to establish his claim, verified by the affidavit of himself, or of subscribing witnesses thereto; and: Third—An affidavit by himself, or his agent, showing the amount then actually due on the lien. Same.

SEC. 235. Until the expiration of the time allowed for redemption, the Court may restrain the commission of waste on the property, or may appoint a receiver to take charge of the property, or the proceeds thereof, by order granted with or without notice, on the application of the purchaser, or the judgment creditor. But it shall not be deemed waste for the person in possession of the property at the time of sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used; or to use it in the ordinary course of husbandry; or to make the necessary repairs of buildings thereon; or to use wood or timber on the property therefor; or for the repair of fences; or for fuel in his family while he occupies the property. Waste may be restrained.

SEC. 236. The purchaser from the time of a sale until a redemption, and a redemptioner from the time of his redemption, until another redemption, shall be entitled to receive from the tenant in possession, the rents of the property sold, or the value of the use and occupation thereof: *provided*, that in case the property shall be redeemed as provided in this Chapter, the amount of such rents and profits which may have been received by such purchaser, or redemptioner, or which said purchaser, or redemptioner, may have been entitled to claim, or receive, unless such claim shall be released to the person claiming such right of redemption, shall be deducted from the amount which said purchaser, or redemptioner, would be entitled to receive on such redemption. Rents and profits.

SEC. 237. If the purchaser of real property sold on execution, or his successor in interest, or a redemptioner be evicted therefrom in consequence of irregularities in the proceedings concerning the sale, or of the reversal, or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor. If the purchaser of property, or his successor in interest, fail to recover possession in consequence of irregularity in the proceedings concerning the sale, or because the property sold was not subject to execution and sale, the Court having jurisdiction thereof shall, on petition of such When purchaser may recover price paid from judgment creditor.

party in interest, or his attorney, revive the original judgment for the amount paid by such purchaser at the sale, with interest thereon from the time of payment at the same rate that the original judgment bore, and when so revived, the said judgment shall have the same effect as an original judgment of the said Court at that date, and bearing interest as aforesaid, and any other, or after acquired property, rents, issues or profits of the said debtor, shall be liable to levy and sale under execution in satisfaction of such debt: *provided*, that no property of such debtor bona fide sold upon the filing of such petition, shall be subject to the lien of such judgment; and, *provided further*, that notice of the filing of such petition shall be made by filing a notice thereof in the office of the Recorder of the County where such property is situated, and that said judgment shall be revived in the name of the original plaintiff, or plaintiffs, for the use of said petitioner, the party in interest.

CHAPTER 2.—PROCEEDINGS SUPPLEMENTARY TO THE EXECUTION.

When judgment debtor may be required to answer.

SEC. 238. When an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, issued to the Territorial Marshal, or the Sheriff of the County, where he resides, or if he do not reside in this Territory, to the Territorial Marshal, or the Sheriff of the County, where the judgment roll is filed, is returned unsatisfied, in whole or in part, the judgment creditor, at any time after such return is made, shall be entitled to an order from the Judge of the Court requiring such judgment debtor to appear, and answer upon oath concerning his property, before such Judge, or a referee appointed by him, at a time and place specified in the order; but no judgment debtor shall be required to attend before a Judge, or referee, out of the County in which he resides, when proceedings are taken under the provisions of this Chapter.

Refusal to apply property to satisfaction of judgment.

SEC. 239. After the issuing of an execution against property, and upon proof by affidavit of a party, or otherwise, to the satisfaction of the Court, or of the Judge thereof, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such Court, or judge, may by an order require the judgment debtor to appear at a specified time and place before such Judge, or a referee appointed by him, to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor toward the satisfaction of the judgment, as are provided upon the return of an execution. Instead of the order requiring the attendance of the judgment debtor, the Judge may, upon affidavit of the judgment creditor, his agent or attorney, if it appear to him that there is danger of the debtor absconding, or the Territorial Marshal, or the Sheriff of the County, to arrest the debtor and

bring him before such Judge. Upon being brought before the Judge, he may be ordered to enter into an undertaking, with sufficient surety, that he will attend from time to time before the Judge or referee, as shall be directed during the pendency of proceedings, and until the final determination thereof, and will not in the meantime dispose of any portion of his property not exempt from execution. In default of entering into such undertaking, he may be committed to prison.

Debtor of judgment debtor may pay.

SEC. 240. After the issuing of an execution against property, any person indebted to the judgment debtor may pay to the Officer the amount of his debt, or so much thereof as may be necessary to satisfy the execution, and the Officer's receipt shall be a sufficient discharge for the amount so paid.

Debtor to appear and answer.

SEC. 241. After the issuing, or return of an execution against property of the judgment debtor, or of any other of several debtors in the same judgment, and upon proof by affidavit or otherwise, to the satisfaction of the Judge that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding fifty dollars, the Judge may, by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place before him, or a referee appointed by him, and answer concerning the same.

SEC. 242. Witnesses may be required to appear and testify before the Judge, or referee, upon any proceeding under this Chapter in the same manner as upon the trial of an issue.

Witnesses.

SEC. 243. The Judge, or referee, may order any property of the judgment debtor not exempt from execution, in the hands of such debtor, or any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment.

SEC. 244. If it appears that a person, or corporation, alleged to have property of the judgment debtor, or indebted to him, claims an interest in the property adverse to him, or denies the debt, the Court or Judge may authorize, by an order made to that effect, the judgment creditor to institute an action against such person, or corporation, for the recovery of such interest or debt; and the Court or Judge may, by order, forbid a transfer, or other disposition of such interest, or debt, until an action can be commenced and prosecuted to judgment. Such order may be modified, or vacated by the Judge granting the same, or the Court in which the action is brought at any time, upon such terms as may be just.

Adverse claim.

SEC. 245. If any person, party, or witness, disobey an order of the referee, properly made in the proceedings before him under this Chapter, he may be punished by the Court, or Judge, ordering the reference for a contempt.

Penalty for disobedience of order of referee.

TITLE VIII.

Actions in Particular Cases.

CHAPTER 1. — ACTIONS FOR THE FORECLOSURE OF MORTGAGES.

SEC. 246. There shall be but one action for the recovery of any debt, or the enforcement of any right secured by mortgage, or lien upon real estate, or personal property, which action shall be in accordance with the provisions in this Chapter. In such action judgment shall be rendered for the amount found due the plaintiff, and the Court shall have power, by its decree or judgment, to direct a sale of the encumbered property, (or such part thereof as may be necessary) and the application of the proceeds of the sale to the payment of the costs and expenses of the sale, the costs of the suit and the amount due to the plaintiff. If it shall appear from the return of the Territorial Marshal or the Sheriff of the County, that there is a deficiency of such proceeds, and a balance still due to the plaintiff, the judgment shall then be docketed for such balance against the defendant, or defendants, personally liable for the debt, and shall, from the time of such docketing, be a lien upon the real estate of the judgment debtor, and an execution may thereupon be issued by the Clerk of the Court, in like manner and form as upon other judgments, to collect such balance, or deficiency, from the property of the judgment debtor.

SEC. 247. If there be surplus money remaining after payment of the amount due on the mortgage, lien, or incumbrance, with costs, the Court may cause the same to be paid to the person entitled to it, and in the meantime may direct it to be deposited in Court.

SEC. 248. If the debt for which the mortgage, lien, or incumbrance is held, be not all due, so soon as sufficient of the property has been sold to pay the amount due, with costs, the sale shall cease, and afterwards, as often as more becomes due for principal or interest, the Court may, on motion, order more to be sold. But if the property cannot be sold in portions, without injury to the parties, the whole may be ordered to be sold in the first instance, and the entire debt and costs paid, there being a rebate of interest where such rebate is proper.

CHAPTER 2.—ACTIONS FOR NUISANCE, WASTE AND WILLFUL TRESPASS IN CERTAIN CASES, ON REAL PROPERTY.

SEC. 249. Anything which is injurious to health, or indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action. Such action may be brought by any person whose property is injuriously affected, or whose personal

Power of Court to direct sale of property.

Surplus after sale, how disposed of.

Sales when debts is not due.

Nuisance defined, action for.

enjoyment is lessened by the nuisance; and by the judgment, the nuisance may be enjoined or abated, as well as damages recovered. Judgment for

SEC. 250. If a guardian, tenant for life or years, joint tenant, or tenant in common of real property, commit waste thereon, any person aggrieved by the waste may bring an action against him therefor, in which action there may be judgment for treble damages. Actions for waste.

SEC. 251. Any person who shall cut down, or carry off, any wood or underwood, tree or timber, or girdle or otherwise injure any tree or timber on the land of another person, or on the street or highway in front of any person's house, village or city lot, or cultivated grounds, or on the commons or public grounds of any city or town, or on the street or highway in front thereof, without lawful authority, shall be liable to the owner of such land, or to such city or town, for treble the amount of damages which may be assessed therefor, in a civil action in any Court having jurisdiction. Injuring Timber, etc.

SEC. 252. Nothing in the last Section shall authorise the recovery of more than the just value of the timber taken from uncultivated wood land for the repair of a public highway or bridge upon the land, or adjoining it. Liability for.

SEC. 253. If a person recover damages for a forcible or unlawful entry in or upon, or detention of any building or any uncultivated real property, judgment may be entered for an amount not exceeding that at which the actual damages are assessed. Same.

SEC. 254. If a person recover damages for a forcible or unlawful entry in or upon, or detention of any building or any uncultivated real property, judgment may be entered for an amount not exceeding that at which the actual damages are assessed. Judgment for forcible and unlawful entry, etc.

CHAPTER 3.—ACTIONS TO DETERMINE CONFLICTING CLAIMS TO REAL PROPERTY, AND OTHER PROVISIONS RELATING TO ACTIONS CONCERNING REAL ESTATE.

SEC. 254. An action may be brought by any person in possession, by himself or his tenant, of real property, against any person who claims an estate or interest therein adverse to him, for the purpose of determining such adverse claim, estate or interest. Actions by persons in possession of real property.

SEC. 255. If the defendant in such action disclaim in his answer any interest or estate in the property, or suffer judgment to be taken against him without answer, the plaintiff shall not recover costs. Costs when not to be recovered.

SEC. 256. In an action for the recovery of real property, where the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgment shall be according to the fact, and the plaintiff may recover damages for withholding the property. Action, Where right has terminated during pendency.

SEC. 257. When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by a defendant, or those under whom he claims, holding under the color of title adversely to the claims of the Improvements, value to be allowed.

plaintiff, in good faith, the value of such improvements shall be allowed as a set-off against such damages.

SEC. 258. The Court in which an action is pending for the recovery of real property, may, on motion, upon notice by either party, for good cause shown, grant an order allowing such party the right to enter upon the property and make survey and measurement thereof, for the purposes of the action.

SEC. 259. The order shall describe the property, a copy thereof shall be served on the owner or occupant, and thereupon such party may enter upon the property with necessary surveyors and assistants, and may make such survey and measurements; but if any unnecessary injury be done to the property he shall be liable therefor.

SEC. 260. A mortgage of real property shall not be deemed a conveyance, whatever its term, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale.

SEC. 261. The Court may, by injunction, on good cause shown, restrain the party in possession from doing any act to the injury of real property during the foreclosure of a mortgage thereon; or after a sale or execution, before a conveyance.

SEC. 262. When real property shall have been sold on execution, the purchaser thereof, or any person who may have succeeded to his interest, may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession, after sale and before possession is delivered under the conveyance.

SEC. 263. An action for the recovery of real property against a person in possession cannot be prejudiced by an alienation made by such person, either before or after the commencement of the action.

CHAPTER 4.—ACTIONS FOR THE PARTITION OF REAL PROPERTY.

SEC. 264. When several persons hold and are in possession of real property, as joint tenants or as tenants in common in which one or more of them have an estate of inheritance, or for life, or lives, or for years, an action may be brought by one or more of such persons for a partition thereof, according to the respective rights of the persons interested therein, and for a sale of such property, or a part of it, if it appear that a partition cannot be made without great prejudice to the owners.

SEC. 265. The interests of all persons in the property, whether such persons be known or unknown, shall be set forth in the complaint specifically and particularly, as far as known to the plaintiff; and if one or more of the parties, or the share or quantity of interest of any of the parties be unknown to the plaintiff, or be uncertain, or contingent, or the ownership of the inheritance depend upon an executory device, or the remainder be a contingent remainder, so that such parties cannot be named, that fact shall be set forth in the complaint.

Court may allow survey to be made.

order of survey.

Mortgage not to be deemed conveyance.

Court may enjoin injury.

Damages for injury.

Action for recovery not prejudiced by alienation.

Action for partition.

Interests of parties to be set forth in complaint.

SEC. 266. No persons who have or claim any liens upon the property, by mortgage, judgment, or otherwise, need be made parties to the action, unless such liens be matters of record. Lien.

SEC. 267. Immediately after filing the complaint, the plaintiff shall file with the Recorder of the County in which the property is situated, a notice of the pendency of the action, containing the names of the parties so far as known, the object of the action, and a description of the property to be affected thereby. From the time of the filing, it shall be deemed notice to all persons. Notice of Act. on.

SEC. 268. The summons shall be directed to all the joint tenants, and tenants in common, and all persons having any interest in, or any liens of record by mortgage, judgment, or otherwise, upon the property, or upon any particular portion thereof; and generally to all persons unknown who have or claim any interest in the property. Summons to parties in interest.

SEC. 269. If a party having a share or interest is unknown, or any one of the unknown parties reside out of the Territory, or cannot be found therein, and such fact is made to appear by affidavit, the summons may be served on such absent or unknown party by publication, as in other cases. When publication is made, the summons, as published shall be accompanied by a brief description of the property which is the subject of the action. Summons by publication.

SEC. 270. The defendants who have been personally served with the summons, and a certified copy of the complaint, shall set forth in their answers, fully and particularly, the nature and extent of their interest in the property, and if such defendants claim a lien upon the property by mortgage, judgment, or otherwise, they shall state the amount and date of the same, and the amount remaining due thereon, and whether the amount has been secured in any other way or not; and if secured, the extent and nature of the security; or they shall be deemed to have waived their rights to such lien. Answer to set forth.

SEC. 271. The rights of the several parties, plaintiffs as well as defendants, may be put in issue, tried and determined by such action; and when a sale of the premises is necessary, the title shall be ascertained by proof to the satisfaction of the Court, before the judgment of sale shall be made; and where service of the complaint has been made by publication, like proof shall be required of the right of the absent or unknown parties, before such judgment is rendered; except that where there are several unknown persons having an interest in the property, their rights may be considered together in the action, and not as between themselves. Rights of parties may be determined

SEC. 272. The plaintiff shall produce to the Court, on the hearing of the case, the certificate of the Recorder of the County where the property is situated, showing whether there were or not any liens outstanding of record upon the property, or any part thereof, at the time of the commencement of the action. Certificate as to liens.

SEC. 273. If it shall appear to the Court, by the certifi-

Persons
holding liens
to be made
parties.

cate of the County Recorder, or County Clerk, or by the sworn or verified statement of any person who may have examined or searched the records, that there are outstanding liens, or incumbrances of record upon such real property, or any part thereof, which existed and were of record at the time of the commencement of said action, and the persons holding such liens are not made parties to the action, the Court shall either order such persons to be made parties to the action, by an amendment or supplemental complaint, or appoint a referee to ascertain whether or not such liens or incumbrances have been paid, or if not paid, what amount remains due thereon, and their order among the liens or incumbrances severally held by the said persons and the parties to said action, and whether the amount remaining due thereon has been secured in any manner, and if secured, the nature and extent of the security.

Notice.

SEC. 274. The plaintiff shall cause a notice to be served a reasonable time previous to the day for appearance before the referee appointed, as provided in the last Section, on each person having outstanding liens of record who is not a party to the action, to appear before the referee at a specified time and place to make proof, by his own affidavit or otherwise, of the true amount due or to become due, contingently or absolutely, thereon. In case such person be absent, or his residence be unknown, service may be made by publication or notice to his agents, under the direction of the Court, in such manner as may be proper. The report of the referee thereon shall be made to the Court, and shall be confirmed, modified or set aside and a new reference ordered, as the justice of the case may require.

Sale of
property,
when may be
ordered.

SEC. 275. If it be alleged in the complaint, and be established by evidence, or if it appear by the evidence without such allegation in the complaint, to the satisfaction of the Court, that the property, or any part of it, is so situated that partition cannot be made without great prejudice to the owners, the Court may order a sale thereof. Otherwise, upon the requisite proofs being made, it shall order a partition according to the respective rights of the parties, as ascertained by the Court, and appoint three referees therefor; and shall designate the portion to remain undivided for the owners whose interests remain unknown or are not ascertained.

Partition,
how made.

SEC. 276. In making the partition, the referee shall divide the property and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties, as determined by the Court, designating the several portions by proper landmarks; and may employ a surveyor, with the necessary assistants, to aid them therein.

Report of
referees.

SEC. 277. The referees shall make a report of their proceedings, specifying therein the manner of executing their trust, describing the property divided, and the shares allotted to each party, with a particular description of each share.

SEC. 278. The Court may confirm or set aside the report,

Judgment.

being confirmed, judgment shall be rendered that such partition be effectual forever, which judgment shall be binding and conclusive: First—On all persons named as parties to the action, and their legal representatives, who have at the time any interest in the property divided, or any part thereof, as owners in fee, or as tenants for life or for years, or as entitled to the reversion, remainder, or the inheritance of such property, or of any part thereof, after the termination of a particular estate therein, and who by any contingency, may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof as tenants for years or for life. Second—On all persons interested in the property who may be unknown, to whom notice shall have been given of the action for partition by publication; and, Third—On all other persons claiming from such parties or persons, or either of them.

SEC. 279. But such judgment and partition shall not affect tenants for years less than ten, to the whole of the property which is the subject of the partition.

Same.

SEC. 280. The expenses of the referees, including those of a surveyor and his assistant, when employed, shall be ascertained and allowed by the Court, and the amount thereof, together with the fees allowed by law to the referees, shall be apportioned among the different parties to the action.

Expenses of Referees.

SEC. 281. When a lien is on an undivided interest or estate of any of the parties, such lien, if a partition be made, shall henceforth be a charge only on the share assigned to such party, but such share shall be first charged with its just proportion of the costs of the partition, in preference to such lien.

Lien on undivided interest.

SEC. 282. When a part of the property only is ordered to be sold, if there be an estate for life or years in an undivided share of the whole property, such estate may be set off in any part of the property not ordered to be sold.

Estate for life or years, how set off.

SEC. 283. The proceeds of the sale of the incumbered property shall be applied, under the direction of the Court, as follows: First—To pay its just proportion of the general costs of the action. Second—To pay the costs of the reference. Third—to satisfy and cancel of record the several liens in their order of priority, by payment of the sums due and to become due; the amount due to be verified by affidavit at the time of payment. Fourth—The residue among the owners of the property sold, according to their respective shares therein.

Proceeds of incumbered property, how applied.

SEC. 284. Whenever any party to an action who holds a lien upon the property, or any part thereof, has other sureties for the payment of the amount of such lien, the Court may, in its discretion, order such securities to be exhausted before a distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property on account thereof.

When other securities of payment of lien.

SEC. 285. The proceeds of sale, and the securities taken by the referees, or any part thereof, shall be distributed by them to the persons entitled thereto, whenever the Court so directs. But in case no direction be given, all such proceeds

Proceeds how to be distributed.

and securities shall be paid into Court, or deposited therein, or as directed by the Court.

determination
of conflicting
claims.

SEC. 286. When the proceeds of sales of any shares or parcels belonging to persons who are parties to the action, and who are known, are paid into Court, the action may be continued as between such parties, for the determination of their respective claims thereto, which shall be ascertained and adjudged by the Court. Further testimony may be taken in Court, or by a referee at the discretion of the Court, and the Court may, if necessary, require such parties to present the facts or law in controversy, by pleadings, as in an original action.

Sales, how
made.

SEC. 287. All sales of real property, made by referees under this Chapter, shall be made by public auction to the highest bidder, upon notice published in the manner required for the sale of real property on execution. The notice shall state terms of sale, and if the property, or any part of it, is to be sold subject to a prior estate, charge or lien, that shall be stated in the notice.

Same.

SEC. 288. The Court shall, in the order for sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises of which it may direct a sale on credit, and for that portion of which the purchase money is required, by the provisions hereinafter contained, to be invested for the benefit of unknown owners, minors, or parties out of the Territory.

Same.

SEC. 289. The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money, of such parts of the property as are directed by the Court to be sold on credit, for the shares of any known owner of full age, in the name of such owner, and for the shares of a minor in the name of the guardian of such minor, and for other shares, in the name of the Clerk of the County and his successors in office.

How tenants
for life, etc.,
may receive
satisfaction
for estates
sold.

SEC. 290. The person entitled to a tenancy for life or years, whose estate shall have been sold, shall be entitled to receive such sum as may be deemed a reasonable satisfaction for such estate, and which the person so entitled may consent to accept instead thereof, by an instrument in writing, filed with the Clerk of the Court. Upon the filing of such consent, the Clerk shall enter the same in the minutes of the Court.

Same.

SEC. 291. If such consent be not given, filed and entered, as provided in the last Section, at or before a judgment of sale is rendered, the Court shall ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be allowed on account of such estate, and shall order the same to be paid to such party, or deposited in the Court for him, as the case may require.

Same.

SEC. 292. If the persons entitled to such estate for life or years be unknown, the Court shall provide for the protection of their rights in the same manner, as far as may be, as if they were known and had appeared.

SEC. 293. In all cases of sales, when it appears that any person has a vested or contingent future right or estate in any of the property sold, the Court shall ascertain and settle the proportional value of such contingent or vested right or estate, and shall direct such proportion of the sale to be invested, secured or paid over, in such manner as to protect the rights and interests of the parties.

Contingent future right or estate, how settled.

SEC. 294. In all cases of sales of property, the terms shall be made known at the time; and if the premises consist of distinct farms or lots, they shall be sold separately.

Terms and mode of sale.

SEC. 295. Neither of the referees, nor any person for the benefit of either of them, shall be interested in any purchase; nor shall a guardian of a minor party be interested in the purchase of any real property, being the subject of the action, except for the benefit of the minor. All sales contrary to the provisions of this Section shall be void.

Certain parties not to be interested in sale.

SEC. 296. After completing a sale of the property, or any part thereof ordered to be sold, the referee shall report the same to the Court, with a description of the different parcels of land sold to each purchaser; the name of the purchaser; the price paid or accrued; the terms and conditions of the sale; and the securities, if any taken. The report shall be filed in the office of the Clerk of the County where the property is situated.

Report of sale.

SEC. 297. If the sale be confirmed by the Court, an order shall be entered directing the referees to execute conveyances and take securities pursuant to such sale; which they are hereby authorized to do. Such order may also give directions to them respecting the disposition of the proceeds of the sale.

Order to execute conveyance.

SEC. 298. When a party entitled to a share of the property, or an incumbrancer entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

When party entitled to share purchases.

SEC. 299. The conveyances shall be recorded in the County where the premises are situated, and shall be a bar against all persons interested in the property in any way, who shall have been named as parties in the action, and against all such parties and persons as were unknown, if the summons have been served by publication and against all persons claiming from them or either of them.

Conveyance, where recorded and effect.

SEC. 300. When there are proceeds of a sale belonging to an unknown owner, or to a person without the Territory, who has no legal representative within it, the same shall be invested in securities of interest for the benefit of the persons entitled thereto.

Proceeds belonging to unknown owners.

SEC. 301. When the security of the proceeds of the sale is taken, or when an investment of any such proceeds is made, it shall be done, except as herein otherwise provided, in the name of the Clerk of the County where the papers are filed, and his successors in office, who shall hold the same for the use and benefit of the parties interested, subject to the order of the Court.

Same.

Security by
referees on
sale.

SEC. 302. When security is taken by the referees on a sale, and the parties interested in such security, by an instrument in writing under their hands delivered to the referees, agree upon the shares and portions to which they are respectively entitled; or when shares and proportions have been previously adjudged by the Court, such securities shall be taken in the names of and payable to, the parties respectively entitled thereto; and shall be delivered to such parties upon their receipt therefor. Such agreement and receipt shall be returned and filed with the Clerk.

Same.

SEC. 303. The Clerk in whose name a security is taken, or by whom an investment is made, and his successors in office, shall receive the interest and principal as it becomes due, and apply and invest the same as the Court may direct, and shall file in his office all securities taken, and keep an account in a book provided and kept for that purpose in the Clerk's office, free for inspection by all persons, of investments and moneys received by him thereon, and the disposition thereof.

Compensation
when.

SEC. 304. When it appears that partition cannot be made equally between the parties according to their respective rights, without prejudice to the rights and interest of some of them, and a petition be ordered by judgment, the Court may adjudge compensation to be made by one party to another, on account of the inequality of partition. But such compensation shall not be required to be made to others by owners unknown, nor by minors, unless in case of a minor it appear that he has personal property sufficient for that purpose, and that his interest will be promoted thereby.

Proceeds of
sale, minors
share paid
to guardian.

SEC. 305. When the share of a minor is sold, the proceeds of the sale may be paid, by the referee making the sale, to his general guardian or special guardian appointed for him in the action, upon giving the security required by law or directed by order of the Court.

Insane person

SEC. 306. The guardian who may be entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, whose interest in real property shall have been sold, may receive, in behalf of such person, his share of the proceeds of such real property, from the referee, on executing, with sufficient sureties, an undertaking approved by the Judge of the Court, that he will faithfully discharge the trust reposed in him, and will render a true and just account to the person entitled, or to his legal representative.

Petition may
be consented
to by guar-
dian.

SEC. 307. The general guardian of a minor, and the guardian entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, who is interested in real estate held in joint tenancy, or in common, or in any other manner so as to authorize his being made a party to an action for the partition thereof, may consent to a partition without action, and agree upon the share to be set off to such minor, or other person entitled, and may execute a release in his behalf to the owners of the shares of the parts to which they may be

SEC. 308. The costs of partition, including fees of referees and other disbursements, shall be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the judgment. In that case they shall be a lien on the several shares, and the judgment may be enforced by execution against such shares, and against other property held by the respective parties. When, however, a litigation arises between some of the parties only, the Court may require the expenses of such litigation to be paid by the parties thereto, or any of them.

costs of
partition.

SEC. 309. The Court, with the consent of the parties, may appoint a single referee, instead of three referees, in the proceedings under the provisions of this Chapter, and the single referee, when thus appointed, shall have all the powers and perform all the duties required of the three referees.

Single referee
may be
appointed.

SEC. 310. When the action is for partition of a mining claim among the tenants in common, joint tenants, coparceners or partners thereof, the Court, upon good cause shown by any party or parties in interest, may, instead of ordering partition to be made in manner as hereinbefore provided, or a sale of the premises for cash, direct the referees to divide the claim in the manner hereinafter specified.

Mining claim
partition of.

SEC. 311. The Court shall, in its order, or by a subsequent order made upon motion, fix the time for division of the claim by the referees, which shall not be less than twenty nor more than forty days from the day of the making the order, except by consent of all the parties in interest who have appeared in the action.

Order of court.

SEC. 312. On the day designated in the order, the referees shall go upon the claim to be divided, and proceed to make division of the same as hereinafter provided, and shall continue from day to day until the whole business is completed.

Referees to go
on claims.

SEC. 313. Two or more of the tenants in common, joint tenants, copartners or parceners may unite together for the purpose of such division of which they shall give the referees written notice before they commence the business of division; and all who do not unite as aforesaid, or give notice of separate action, shall, for the purposes of division, be deemed and held to have united. The referees in their action shall recognize those named in the order of the Court, or their agents and attorneys in fact, duly appointed by instrument in writing under seal, and acknowledged as in cases of conveyances of real estate, the guardian of a minor, and the guardian entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, and as to the interest of each, shall be controlled entirely by the order of the Court.

Parties may
unite.

SEC. 314. At the time and place of division, one of the referees to be selected by them, shall, in the manner of public auction, offer to the party or parties who will take the least part or portion of said mining claim in proportion to the interest he or they may have therein. the privilege of first selecting

Parties to
select place
of location.

the place at which his portion shall be located, and upon closing the bids the referees shall proceed to measure and mark off, by distinct metes and bounds, to the lowest bidder, his or their portion of said mining claim, at the place designated by them or him, according to the terms of his or their bid.

Same.

SEC. 315. When the referees have marked off and set apart the interest of the lowest bidder, as provided in the last Section, they shall offer to the remaining parties the privilege of selection, as in said Section mentioned and described, and shall, upon closing the bids, proceed in the same manner to locate and mark off the portion of the lowest bidder, and shall thereafter continue in the same manner to receive bids and mark off the interest of the bidder or bidders until there shall remain but one party in interest, or parties united, forming one interest, as provided in Section Three Hundred and Thirteen.

Parties remaining.

SEC. 316. The party or parties remaining, as provided in the last Section, shall become the owner or owners, as the case may be, of the entire claim not marked off and set apart to other parties as hereinbefore provided, in proportion to their respective interests in the claim.

Evidence to be returned.

SEC. 317. The referees shall return, with their report in this Act required to be made by them, the evidences of authority presented to them by persons other than the parties mentioned in the order of the Court, by which they claim the right to bid, or otherwise act, during the proceedings hereinbefore mentioned.

CHAPTER 5.—ACTIONS FOR THE USURPATION OF AN OFFICE OR FRANCHISE.

Actions for usurpation of office, etc.

SEC. 318. An action may be brought by the Attorney-General in the name of the people of this Territory upon his own information, or on the complaint of a private party, against any person who usurps, intrudes into, holds or exercises any office, or franchise, real or pretended, within this Territory, without authority of law. And it shall be the duty of the Attorney-General to bring the action whenever he has reason to believe that any such office or franchise has been usurped, intruded into, held or exercised by any person, without authority of law.

Complaint, what to state.

SEC. 319. Whenever such action is brought, the Attorney-General, in addition to the statement of the cause of action, may also set forth in the complaint the name of the person rightly entitled to the office, with a statement of his right thereto; and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to the office, and by means of usurpation thereof, an order may be granted by the Judge, or Court wherein the case is pending, for the arrest of such defendant, and holding him to bail; and thereupon he may be arrested and held to bail, in the same manner and with the same effect, and subject to the same

rights and liabilities as in other civil actions where the defendant is subject to arrest. Defendant may be arrested.

SEC. 320. In every such case judgment may be rendered upon the right of the defendant, and also upon the right of the party so alleged to be entitled; or only upon the right of the defendant, as justice shall require. Judgment, how rendered.

SEC. 321. If the judgment be rendered upon the right of the person so alleged to be entitled, and the same be in favor of such person, he shall be entitled, after taking the oath of office and executing such official bond as may be required by law, to take upon himself the execution of the office. When person may take office.

SEC. 322. If judgment be rendered upon the right of the person so alleged to be entitled, in favor of such person, he may recover, by action, the damages which he shall have sustained by reason of the usurpation of the office by the defendant. Damages recoverable.

SEC. 323. When several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons, in order to try their respective rights to such office or franchise. Rights of several may be tried in one action.

SEC. 324. When a defendant, against whom such action has been brought, is adjudged guilty of usurping, or intruding into, or unlawfully holding any office, franchise or privilege, judgment shall be rendered that such defendant be excluded from the office, franchise or privilege, and that he pay the costs of the action. The Court may, also, in its discretion, impose upon the defendant a fine not exceeding five thousand dollars, which fine, when collected, shall be paid into the Treasury of the Territory. Judgment, when defendant has intruded into office.

TITLE IX.

Of Appeals in Civil Actions.

CHAPTER 1.—APPEALS IN GENERAL.

SEC. 325. A judgment or order in a civil action, except when expressly made final by this Act, may be reviewed as prescribed by this Title, and not otherwise. Judgment, how reviewed.

SEC. 326. An order made out of Court, without notice to the adverse party, may be vacated or modified without notice, by the Judge who made it, or may be vacated or modified on notice, in the manner in which other motions are made. Order, how may be vacated.

SEC. 327. Any party aggrieved may appeal in the cases prescribed in this Title. The party appealing shall be known as the appellant, and the adverse party as the respondent. Parties designated.

SEC. 328. An appeal may be taken: First—From a final judgment in an action or special proceeding commenced in the Court in which the judgment is rendered, within one year after the rendition of judgment. Second—From a judgment rendered on an appeal from an inferior Court, within ninety days after the rendition of the judgment. Third—From an order granting or refusing a new trial, from an order granting or dissolving an injunction, from an order refusing to grant or

In what cases an appeal may be taken.

dissolve an injunction, and from any special order made after the final judgment, within sixty days after the order is made and entered in the minutes of the Court. Fourth—From an interlocutory judgment or order in cases of partition which determines the right of the several parties, and directs partition, sale or division to be made, within sixty days after the rendition of the same.

How made. SEC. 329. The appeal shall be made by filing with the Clerk of the Court with whom the judgment or order appealed from is entered, a notice stating the appeal from the same, or some specific part thereof, and serving a copy of the notice upon the adverse party or his attorney.

Statement on appeals. SEC. 330. When the party who has the right to appeal wishes a statement of the case to be annexed to the record of the judgment or order, he shall, within twenty days after the entry of such judgment or order, prepare such statement, which shall state specifically the particular errors or grounds upon which he intends to rely on the appeal, and shall contain so much of the evidence as may be necessary to explain the particular errors or grounds specified and no more, and shall file the same with the Clerk, and serve a copy thereof upon the adverse party. The respondent may, within five days thereafter, prepare and file amendments to the statement, and shall serve a copy thereof on the appellant; the statement and amendments shall be presented to the Judge or referee who tried or heard the case, upon notice of two days to the respondent, and a true statement shall thereupon be settled by such Judge or referee. If no amendments are filed, the statement may be presented to the Judge or referee for settlement without any notice to the respondent.

Waiver of. SEC. 331. If the party shall omit to make a statement within the time limited, he shall be deemed to have waived his right thereto; and when a statement is made and the parties shall omit within the several times above limited, the one party to propose amendments, the other to notify an appearance before the Judge or referee, they shall respectively be deemed, the former to have agreed to the statement as prepared, and the latter to have agreed to the amendments as proposed; but the Judge or referee, who tried or heard the case, shall, notwithstanding such omission or implied agreement, have power to correct any misstatement of his rulings which such statement may contain.

Time enlarged. SEC. 332. The several periods of time above limited may be enlarged, upon good cause shown, by the Judge before whom the cause was tried.

How certified. SEC. 333. The statement, when settled by the Judge or referee, shall be signed by him, with his certificate that the same has been allowed and is correct. When the statement is agreed upon by the parties, they or their attorneys shall sign the same, with their certificate that it has been agreed upon by them and is correct. In either case, when settled or agreed upon, it shall be filed with the Clerk.

SEC. 334. A copy of the statement shall be annexed to a

copy of the judgment roll, if the appeal be from a judgment; if the appeal be from an order, to a copy of such order. Copy to be annexed.

SEC. 335. The provisions of the last five preceding Sections shall not apply to appeals taken from an order made upon affidavit filed, but such affidavit shall be annexed to the order, in the place of the statement mentioned in those Sections. Certain sections not to apply to appeals from order.

SEC. 336. Upon an appeal from a judgment, the Court may review any intermediate order involving the merits and necessarily affecting the judgment. Review of appeals from judgment.

SEC. 337. Upon an appeal from a judgment or order, the Appellate Court may reverse, affirm or modify the judgment or order appealed from, in the respect mentioned in the notice of appeal, and as to any or all of the parties; and may set aside, or confirm, or modify, any or all of the proceedings subject to or dependant upon such judgment or order, and may, if necessary or proper, order a new trial. When the judgment or order is reversed or modified, the Appellate Court may make complete restitution of all property and rights lost by the erroneous judgment or order, and when it appears to the Appellate Court that the appeal was made for delay, it may add to the costs such damages as may be just, not exceeding ten per cent. Same.

SEC. 338. On an appeal from a final judgment, the appellant shall furnish the Court with a transcript of the notice of appeal, and the statement, if there be one, certified by the respective attorneys of the parties to the appeal, or by the Clerk of the Court. On an appeal from a judgment rendered on an appeal or from an order, the appellant shall furnish the Court with a copy of the notice of appeal, the judgment or order appealed from, and a copy of the papers used on the hearing of the Court below, such copies to be certified in like manner to be correct. If any written opinion be placed on file in rendering judgment or making the order in the Court below, a copy shall be furnished, certified in like manner. If the appellant fail to furnish the requisite papers, the appeal may be dismissed. Duty of appellant.

SEC. 339. To render an appeal effectual for any purpose, in any case, a written undertaking shall be executed on the part of the appellant, by at least two sureties, to the effect that the appellant will pay all damages and costs which may be awarded against him on the appeal or a sum not exceeding one hundred dollars shall be deposited with the Clerk with whom the judgment or order was entered, to abide the event of the appeal. Such undertaking shall be filed, or such deposit made with the Clerk, within five days after the notice of appeal is filed. Undertaking.

SEC. 340. If the appeal be from a judgment or order directing the payment of money, it shall not stay the execution of the judgment or order, unless a written undertaking be executed on the part of the appellant by two or more sureties, stating their places of residence and occupation, to the effect that they are bound in double the amount named in the Stay of execution of judgment, etc., etc.

judgment or order; that if the judgment or order appealed from, or any part thereof be affirmed, the appellant shall pay the amount directed to be paid by the judgment or order, or the part of such amount as to which the judgment or order shall be affirmed, if affirmed only in part, and all damages and costs which shall be awarded against the appellant upon the appeal. When the judgment or order appealed from is made payable in a specified kind of money or currency, the undertaking required by this Section shall be drawn and made payable in the same kind of money or currency specified in such judgment or order.

Assignment
or delivery of
documents.

SEC. 341. If the judgment or order appealed from, direct the assignment or delivery of documents, or personal property, the execution of the judgment or order shall not be stayed by appeal, unless the things required to be assigned or delivered be placed in the custody of such officer or receiver as the Court may appoint, or unless an undertaking be entered into on the part of the appellant, with at least two sureties, and in such amount as the Court or the Judge thereof may direct, to the effect that the appellant will obey the order of the Appellate Court upon the appeal.

Execution of
conveyance,
etc.

SEC. 342. If the judgment or order appealed from, direct the execution of a conveyance or other instrument, the execution of the judgment or order shall not be stayed by the appeal until the instrument is executed and deposited with the Clerk with whom the judgment or order is entered, to abide the judgment of the Appellate Court.

Sale or
delivery of
property, etc.

SEC. 343. If the judgment or order appealed from, direct the sale or delivery of possession of real property, the execution of the same shall not be stayed unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect, that during the possession of such property by the appellant, he will not commit, nor suffer to be committed, any waste thereon, and that if the judgment be affirmed, he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof, pursuant to the judgment or order, not exceeding a sum to be fixed by the Judge of the Court by which the judgment was rendered or order made, and which shall be specified in the undertaking. When the judgment is for the sale of mortgaged premises, and the payment for a deficiency arising upon the sale, the undertaking shall also provide for the payment of such deficiency. In all other cases, not hereinbefore mentioned, the amount of the undertaking to stay the execution of the judgment or order shall be fixed by the Court or the Judge thereof.

Appeal
perfected
to stay
proceedings
below.

SEC. 344. Whenever an appeal is perfected, as provided by the preceding Sections in this Chapter, it shall stay all further proceedings in the Court below, upon the judgment or order appealed from, or upon matter embraced therein; but the Court below may proceed upon any other matter included in the action and not affected by the judgment or order appealed from. And the Court below may, in its discretion,

dispense with or limit the security required by said Sections, when the appellant is an executor, administrator, trustee, or other person acting in another's right.

SEC. 345. The undertaking prescribed by Sections Three Hundred and Thirty-Eight, Three Hundred and Thirty-Nine, Three Hundred and Forty, Three Hundred and Forty-One and Three Hundred and Forty-Three, may be in one instrument or several, at the option of the appellant.

Undertaking
may be one
or several.

SEC. 346. An undertaking upon an appeal shall be of no effect unless it be accompanied by the affidavit of the sureties that they are each worth, the amount specified therein, over and above all their just debts and liabilities, exclusive of the property exempt from execution, except where the judgment exceeds three thousand dollars and the undertaking on appeal is executed by more than two sureties, they may state on their affidavit that they are severally worth amounts less than that expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties. The adverse party may, however, except to the sufficiency of the sureties within five days after the filing of the undertaking, and unless they, or other sureties, justify before the Judge of the Court below, or Clerk, within five days thereafter, upon notice to the adverse party, to the amounts stated in their affidavits, the appeal shall be regarded as if no such undertaking had been given; and in all cases where an undertaking is required on appeal by the provision of this Chapter, a deposit in the Court below of the amount of the judgment appealed from, and one hundred dollars in addition, shall be equivalent to filing the undertaking, and in all cases the undertaking or deposit may be waived by the written consent of the respondent.

Affidavit for
sureties, etc.

SEC. 347. In cases not provided for in Sections Three Hundred and Thirty-Nine, Three Hundred and Forty, Three Hundred and Forty-One and Three Hundred and Forty-Three, the perfecting of an appeal by giving the undertaking, and the justification of the sureties thereon, if required, or making the deposit mentioned in Section Three Hundred and Thirty-Nine shall stay proceedings in the Court below upon the judgment or order appealed from, except that where it directs the sale of perishable property the Court below may order the property to be sold, and the proceeds thereof to be deposited to abide the judgment of the Appellate Court.

Appeal per-
fected to stay
proceedings,
when.

SEC. 348. Appeals may be brought to a hearing by either party upon a notice of three days to the opposite party. Before the argument each party shall furnish to the other, and to each of the Justices, a copy of his points and authority, or either party may file one copy thereof with the Clerk, who shall cause the requisite copies to be made.

Hearing, etc.

SEC. 349. When judgment is rendered upon the appeal, it shall be certified by the Clerk of the Supreme Court to the Clerk with whom the judgment roll is filed or the order appealed from is entered. In cases of appeal from the judgment, the Clerk with whom the roll is filed, shall attach the certificate to the judgment roll, and enter a minute of the

Judgment
on appeal.

judgment of the Supreme Court on the docket against the original entry. In case of appeal from an order, the Clerk shall enter at length in the records of the Court the certificate received, and minute against the entry of the order appealed from a reference to the certificate, with a brief statement that the order has been affirmed, reversed or modified, as the case may be, by the Supreme Court, on appeal.

Execution for costs.

SEC. 350. Whenever costs are awarded to a party by an Appellate Court, such party may have an execution for the same on filing a remittitur with the Clerk of the Court below, and it shall be the duty of such Clerk, whenever the remittitur is filed, to issue the execution upon application therefor, and whenever costs are awarded to a party by an order of any Court, such party may have an execution therefor in like manner as upon a judgment.

TITLE X.

Miscellaneous Proceedings.

CHAPTER 1.—PROCEEDINGS AGAINST JOINT DEBTORS.

How those not served may be bound by judgment.

SEC. 351. When a judgment is recovered against one or more of several persons jointly indebted upon an obligation, by proceeding as provided in Section Thirty-Two, those who were not originally served with the summons and did not appear to the action, may be summoned to show cause why they should not be bound by the judgment in the same manner as though they had been originally served with the summons.

Summons to show cause.

SEC. 352. The summons, as provided in the last Section, shall describe the judgment and require the person summoned to show cause why he should not be bound by it, and shall be served in the same manner and returnable within the same time as the original summons. It shall not be necessary to file a new complaint.

Same.

SEC. 353. The summons shall be accompanied by an affidavit of the plaintiff, his agent, representative or attorney, that the judgment, or some part thereof, remains unsatisfied, and shall specify the amount due thereon.

Answer and defense.

SEC. 354. Upon such summons, the defendant may answer within the time specified therein, denying the judgment, or setting up any defense which may have arisen subsequently, or he may deny his liability on the obligation upon which the judgment was recovered.

Where defendant denies liability.

SEC. 355. If the defendant, in his answer, deny the judgment, or set up any defense which may have arisen subsequently, the summons, with the affidavit annexed, and the answer, shall constitute the written allegations in the case. If he deny his liability on the obligation upon which the judgment was recovered, a copy of the original complaint and the summons, with the affidavit annexed, and the answer, shall constitute such written allegations.

SEC. 356. The issues formed may be tried as in other cases, but when the defendant denies, in his answer, any liability on the obligation upon which the judgment was rendered, if a verdict be found against him, it shall be for the amount remaining unsatisfied on such original judgment, with interest thereon.

Issues
formed, how
tried.

CHAPTER 2.—CONFESSION OF JUDGMENT WITHOUT ACTION.

SEC. 357. A judgment by confession may be entered without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this Chapter.

Judgment by
confession,
how entered.

SEC. 358. A statement in writing shall be made, signed by the defendant and verified by his oath, to the following effect: First—It shall authorize the entry of judgment for a specified sum. Second—If it be money due, or to become due, it shall state concisely the facts out of which it arose, and shall show that the sum confessed therefor is justly due, or to become due. Third—If it be for the purpose of securing the plaintiff against a contingent liability, it shall state concisely the facts constituting the liability, and shall show that the sum confessed therefor does not exceed the same.

Statement in
writing to be
made.

SEC. 359. The statement shall be filed with the Clerk of the Court in which the judgment is to be entered, who shall endorse upon it, and enter in the judgment book, a judgment of such Court for the amount confessed, with five dollars costs. The judgment and affidavit, with the judgment indorsed, shall thereupon become the judgment roll.

Filed with
Clerk of
Court.

CHAPTER 3.—SUBMITTING A CONTROVERSY WITHOUT ACTION.

SEC. 360. Parties to a question in difference, which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any Court which should have jurisdiction if an action had been brought. But it must appear, by affidavit, that the controversy is real, and the proceedings in good faith, to determine the rights of the parties. The Court shall thereupon hear and determine the case, and render judgment thereon, as if an action were pending.

Submission of
controversy
without action

SEC. 361. Judgment shall be entered in the judgment book, as in other cases, but without costs for any proceeding prior to the trial. The case, the submission, and a copy of the judgment shall constitute the judgment roll.

Judgment,
how entered.

SEC. 362. The judgment may be enforced in the same manner as if it had been rendered in an action, and shall be in the same manner subject to appeal.

How enforced

CHAPTER 4.—OF ARBITRATIONS.

Arbitration,
submission of.

SEC. 363. Persons capable of contracting, may submit to arbitration any controversy which might be the subject of a civil action between them, except a question of title to real property in fee or for life. This qualification shall not include questions relating merely to the partition or boundaries of real property.

How made.

SEC. 364. The submission to arbitration shall be in writing, and may be to one or more persons.

Same, revoca-
tion of.

SEC. 365. It may be stipulated in the submission that it be entered as an order of the Court, for which purpose it shall be filed with the Clerk of the Court where the parties, or one of them, reside. The Clerk shall thereupon enter in his register of actions a note of the submission, with the names of the parties, the names of the arbitrators, the date of the submission, when filed, and the time limited by the submission, if any, within which the award shall be made. When so entered, the submission shall not be revoked without the consent of both parties. The arbitrators may be compelled by the Court to make an award, and the award may be enforced by the Court in the same manner as a judgment. If the submission be not made an order of the Court, it may be revoked at any time before the award is made.

Powers of
arbitrators.

SEC. 366. Arbitrators shall have power to appoint a time and place for hearing, to adjourn from time to time, to administer oaths to witnesses, to hear the allegations and evidence of the parties, and to make an award thereon.

Proceedings
of.

SEC. 367. All the arbitrators shall meet and act together during the investigation, but when met, a majority may determine any question. Before acting, they shall be sworn before an officer authorized to administer oaths, faithfully and fairly to hear and examine the allegations and evidence of the parties in relation to the matters in controversy, and to make a just award according to their understanding.

Award, how
made, effect of.

SEC. 368. The award shall be in writing, signed by the arbitrators, or a majority of them, and delivered to the parties. When the submission is made an order of the Court, the award shall be filed with the Clerk, and a note thereof, made in his register. After the expiration of five days from the filing of the award, upon the application of a party, and on filing an affidavit showing that notice of filing the award has been served on the adverse party or his attorney, at least four days prior to such application, and that no order staying the entry of judgment has been served, the award shall be entered by the Clerk in the judgment book, and shall thereupon have the effect of a judgment.

On what
grounds
vacated.

SEC. 369. The Court, on motion, may vacate the award upon any of the following grounds, and may order a new hearing, before the same arbitrators, or others, in its discretion: First—That it was procured by corruption or fraud. Second—

That the arbitrators were guilty of misconduct or committed gross error in refusing, on cause shown, to postpone the hearing, or in refusing to hear pertinent evidence, or otherwise acted improperly, in a manner by which the rights of the party were prejudiced. Third—That the arbitrators exceeded their powers in making their award; or that they refused, or improperly omitted to consider a part of the matters submitted to them; or that the award is indefinite, or cannot be performed.

SEC. 370. The Court may, on motion, modify or correct the award where it appears: First—That there was a miscalculation in figures upon which it was made, or that there is a mistake in the description of some person or property therein. On what grounds modified. Second—When a part of the award is upon matters not submitted, which part can be separated from other parts, and does not affect the decision on the matter submitted. Third—When the award, though imperfect in form, could have been amended if it had been a verdict, or the imperfection disregarded.

SEC. 371. The decision upon a motion shall be subject to appeal. Appeal. in the same manner as an order which is subject to appeal in a civil action; but the judgment entered before a motion is made shall not be subject to appeal.

SEC. 372. If a submission to arbitration be revoked, and action be brought therefor, the amount to be recovered shall only be the costs and damages sustained in preparing for and attending the arbitration. Submission revoked, amount recoverable.

CHAPTER 5.—OFFER OF THE DEFENDANT TO COMPROMISE THE WHOLE OR A PART OF AN ACTION.

SEC. 373. The defendant may, at any time before the trial or judgment, serve upon the plaintiff an offer to allow judgment to be taken against him for the sum, or property, or to the effect therein specified. Offer to compromise not to prejudice. If the plaintiff accept the offer, and give notice thereof within five days, he may file the summons, complaint and offer, with an affidavit of notice of acceptance, and the Clerk shall thereupon enter judgment accordingly. If the notice of acceptance be not given, the offer shall be deemed withdrawn, and shall not be given in evidence; and if the plaintiff fail to obtain a more favorable judgment, he shall not recover costs, but shall pay the defendant's costs from the time of the offer.

TITLE XI.

Of Witnesses, and of the Manner of Obtaining Evidence.

CHAPTER 1.—OF WITNESSES.

SEC. 374. All persons, without exception, otherwise than as specified in this Chapter, may be witnesses in any action or Witnesses, who may be.

proceeding. Facts which, by the common law, would cause the exclusion of witnesses may still be shown for the purpose of affecting their credibility.

Who not
disqualified.

SEC. 375. No person shall be disqualified as a witness in any action or proceeding on account of his opinions on matters of religious belief, or by reason of his interest in the event of the action or proceeding as a party thereto or otherwise; but the party or parties thereto, and the person in whose behalf such action or proceeding may be brought or defended, shall, except as hereinafter excepted, be competent and be compellable to give evidence, either *viva voce* or by deposition, or upon a commission, in the same manner and subject to the same rules of examination as other witnesses, on behalf of himself; or either or any of the parties to the action or proceeding.

Refusal to
testify.

SEC. 376. If a party refuse to attend and testify at the trial, or to give his deposition before trial, or upon a commission when required, his complaint, answer, or reply may be stricken out and judgment be taken against him; and he may be also, in the discretion of the Court, proceeded against, as in other cases, for a contempt.

Who shall not
testify, etc.

SEC. 377. No person shall be allowed to testify under the provisions of Section Three Hundred and Seventy-Five, when the other party to the transaction, or opposite party in the action, or the party for whose immediate benefit the action or proceeding is prosecuted or defended, is the representative of a deceased person, when the facts to be proved transpired before the death of such deceased person, and nothing contained in said Section shall affect the laws in relation to attestation of any instrument required to be attested.

Who shall not
be witnesses.

SEC. 378. Persons against whom judgment has been rendered upon a conviction for felony, unless pardoned by the Governor, or such judgment has been reversed on appeal, shall not be witnesses.

Same.

SEC. 379. A husband shall not be a witness for, or against, his wife, nor a wife a witness for, or against, her husband; nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage. But this exception shall not apply to an action or proceeding by one against the other.

Same.

SEC. 380. An attorney or counselor shall not, without the consent of his client, be examined as a witness as to any communication made by the client to him, or his advice given thereon, in the course of professional employment.

Same.

SEC. 381. A clergyman or priest shall not, without the consent of the person making the confession, be examined as a witness as to any confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs.

Same.

SEC. 382. A licensed physician or surgeon shall not, without the consent of his patient, be examined as a witness as to any information acquired in attending the patient, which was necessary to enable him to prescribe or act for the patient:

provided, however, in any suit or prosecution against a physician or surgeon for malpractice, if the patient or party suing or prosecuting shall require or give such consent, and any such witness shall give testimony, then such physician or surgeon, defendant, may call any other physicians or surgeons as witnesses on behalf of defendant, without the consent of such patient or party suing or prosecuting.

SEC. 383. A public officer shall not be examined as a witness as to communications made to him in official confidence, when the public interest would suffer by the disclosure. Same.

SEC. 384. The Judge himself, or any juror, may be called as a witness by either party, but in such case it shall be in the discretion of the Court, or Judge, to order the trial to be postponed, or suspended, and to take place before another Judge or jury. Judge or juror may be witnesses.

SEC. 385. When a witness does not speak or understand the English language, an interpreter shall be sworn to interpret for him. Any person resident of the County may be summoned by any Judge or Court to appear before such Judge or Court to act as interpreter in any action or proceeding. The summons shall be served and returned in like manner as a subpoena. Any person so summoned shall, for a failure to attend at the time and place named in the summons, be liable to punishment for contempt. Interpreters.

CHAPTER 2.—MANNER OF COMPELLING THE ATTENDANCE OF WITNESSES, AND THEIR RIGHTS AND DUTIES.

SEC. 386. A subpoena may require not only the attendance of the person to whom it is directed, at a particular time and place to testify as a witness, but may also require him to bring with him any books, and papers, under his control, containing business, accounts or transactions of a pecuniary character between the parties to the action, to be used as evidence. No person shall be required to attend as a witness before any Court, Judge, Justice, referee or other officer out of the County in which he resides, unless the distance be less than thirty miles from his place of residence to the County of trial: *provided*, that such witness shall have the right to demand payment in advance of his fees for one day's attendance, and his mileage to and from the place specified in the subpoena. Attendance of witnesses, what subpoena may require.

SEC. 387. The subpoena shall be issued as follows: *Provided.* First—To require attendance before a Court, it shall be issued in the name and under the seal of the Court, before which the attendance is required. Second—To require attendance out of Court, before a Judge, Referee, Justice, or other officer authorized to administer oaths or take testimony in any matter under the laws of this Territory, it shall be issued by the Judge, Referee, Justice, or other officer before whom the attendance is required. Third—To require attendance before a Commissioner appointed to take testimony by a Court of a foreign Subpoena, how issued.

country, or of the United States, or of any State, or of a Territory of the United States, or any Judge or Justice of the Peace of this Territory, it may be issued by a Judge or Justice of the Peace in places within their respective jurisdictions, with like power to enforce attendance and to punish contempt of such subpoena, as such Judge or Justice could exercise if the subpoena directed the attendance of the witness before his own Court, in a matter pending therein.

How served.

SEC. 388. The service of a subpoena shall be made by showing the original, and stating its substance to the witness, or by reading it to him, giving or offering to him at the same time, if demanded by him, the fees to which he is entitled for traveling to and from the place designated, and one day's attendance there. Such service may be made by any person.

Same.

SEC. 389. If a witness conceal himself, for the purpose of evading the service of a subpoena upon him, he may, upon proof by affidavit of the concealment, and the materiality of his evidence, be punished for contempt by any Court, or Judge, issuing the subpoena, and may be liable to all penalties prescribed in Section Three Hundred and Ninety-Four.

Persons present required to testify, etc.

SEC. 390. A person present in Court, or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpoena issued by such Court or Officer.

Duty of witness.

SEC. 391. It shall be the duty of the witness, duly served with a subpoena, to attend at the time appointed, with any papers under his or her control required by the subpoena, to answer all pertinent and legal questions, and, unless sooner discharged, to remain until the testimony is closed.

Questions witness must answer.

SEC. 392. A witness shall answer questions legal and pertinent to the matter in issue, though his answer may establish a claim against himself; but he need not give an answer which will have a tendency to subject him to punishment for a felony, nor need give an answer which will have a direct tendency to degrade his character, unless it be to the very fact in issue, or to a fact from which the fact at issue would be presumed. But a witness shall answer as to the fact to his previous conviction for felony.

Disobedience to subpoena.

SEC. 393. Disobedience to a subpoena, or a refusal to be sworn, or to answer as a witness, or to subscribe an affidavit or deposition when required, may be punished as a contempt by the Court or officer issuing the subpoena or requiring the witness to be sworn; and if the witness be a party, his complaint may be dismissed or his answer stricken out.

Same.

SEC. 394. A witness disobeying a subpoena shall also be liable to forfeit, to the party aggrieved, a sum not exceeding one hundred dollars, and shall pay all damages which he may sustain by the failure of the witness to attend, which forfeiture and damages may be recovered in a civil action.

Failure to attend.

SEC. 395. In case of failure of a witness to attend, the Court or officer issuing the subpoena, upon proof of the service thereof, and of the failure of the witness, may issue a warrant to the Sheriff of the County to arrest the witness and bring

him before the Court or officer where his attendance was required.

SEC. 396. If the witness be a prisoner, confined in a jail or prison within this Territory for any other cause than a sentence for felony, an order for his examination in the prison upon deposition, or for his temporary removal and production before a Court or officer for the purpose of being orally examined, may be made by the Court or Judge thereof, in which the action or special proceeding is pending. Confined in jail, etc.

SEC. 397. Such order can only be made upon affidavit, showing the nature of the action or proceeding, the testimony expected from the witness and its materiality. Same.

SEC. 398. If the witness be imprisoned in the County where the action or proceeding is pending, and for a cause other than a sentence for felony, his production may be required. In all other cases his examination, when allowed, shall be taken upon deposition. Same.

SEC. 399. Every person who has been in good faith served with a subpoena to attend as a witness before a Court, Judge, Commissioner, referee or other person, in a case where the disobedience of the witness may be punished as a contempt, shall be exonerated from arrest in a civil action while going to the place of attendance, necessarily remaining there and returning therefrom. Witness exonerated from arrest.

SEC. 400. The arrest of a witness contrary to the last Section shall be void; but an officer shall not be liable to the party for making the arrest in ignorance of the facts creating the exonerated, but shall be liable for any subsequent detention of the party, if such party claim the exemption and make an affidavit, stating: First—That he has been served with a subpoena to attend as a witness before a Court; officer or other person, specifying the same, the place of attendance, and the action or proceeding in which the subpoena was issued; and, Second—That he has not been thus served by his own procurement, with the intention of avoiding an arrest. Liability of officer making arrest.

CHAPTER 3.—ON AFFIDAVITS.

SEC. 401. An affidavit to be used before any Court, Judge or officer of this Territory may be taken before any Judge or Clerk of any Court, or any Justice of the Peace or Notary Public in this Territory. Affidavits, how taken.

SEC. 402. An affidavit taken in a State, or in a Territory of the United States, to be used in this Territory, shall be taken before a Commissioner appointed by the Governor of this Territory to take affidavits and depositions in such State or Territory; or before any Judge or Court of Record having a seal: *provided*, that a Judge of a Court of this Territory shall have power to appoint a Special Commissioner for such purpose. In another State, etc.

SEC. 403. An affidavit taken in a foreign country to be used in this Territory shall be taken before an Ambassador, In foreign country,

Minister, or Consul of the United States, or before any Judge of a Court of Record having a seal in such foreign country.

How certified
when taken
out of State.

SEC. 404. When an affidavit is taken before a Judge of a Court in a State or in a Territory of the United States, or in a foreign country, the genuineness of the signature of the Judge, the existence of the Court, and the fact that such a Judge is a member thereof, shall be certified by the Clerk of the Court, under the seal thereof.

CHAPTER 4.—OF DEPOSITIONS TAKEN IN THIS TERRITORY.

Depositions,
in what cases
may be taken.

SEC. 405. The testimony of a witness in this Territory may be taken by deposition in an action at any time after the service of the summons or the appearance of the defendant, and in a special proceeding, after a question of fact has arisen therein in the following cases: First—When the witness is a party to the action or proceeding, or a person for whose immediate benefit the action or proceeding is prosecuted or defended. Second—When the witness resides out of the County in which his testimony is to be used. Third—When the witness is about to leave the County where the action is to be tried, and will probably continue absent when the testimony is required. Fourth—When the witness, otherwise liable to attend the trial, is nevertheless too infirm to attend, or resides within the County, but more than fifty miles from the place of trial.

How taken.

SEC. 406. Either party may have the deposition of a witness in this Territory taken before any Judge or Clerk of a Court, or any Justice of the Peace or Notary Public in this Territory, on serving upon the adverse party previous notice of the time and place of examination, together with a copy of an affidavit, showing that the case is one mentioned in the last Section. At any time during the forty days immediately after the service of summons by publication has been completed, and at any time thereafter, when the defendant has not appeared, and his residence is unknown to the plaintiff, the notice required by this Section may be served upon the Clerk of the Court where the action is pending. Such notice shall be at least five days, and, in addition, one day for every twenty-five miles of the distance of the place of examination from the residence of the person upon whom the notice is served, unless, for a cause shown, a Judge by order prescribe a shorter time. When a shorter time is prescribed, a copy of the order shall be served with the notice.

Manner of
examination,
etc.

SEC. 407. Either party may attend such examination and put such questions, direct and cross, as may be proper. The deposition, when completed, shall be carefully read to the witness and corrected by him in any particular, if desired; it shall then be subscribed by the witness, certified by the Judge or officer taking the deposition, inclosed in an envelope or wrapper, sealed and directed to the Clerk of the Court in which the action is pending, or to such person as the parties in writing may agree upon, and either delivered by the Judge or officer to the Clerk or such person, or transmitted through the

mail or by some safe private opportunity, and thereupon such deposition may be used by either party upon the trial or other proceeding against any party giving or receiving the notice, subject to all legal exceptions. But if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was stated at the time of the examination. If the deposition be taken by reason of the absence, or intended absence, from the County of the witness, or because he is too infirm to attend, proof by affidavit or oral testimony shall be made at the trial that the witness continues absent or infirm, to the best of the deponent's knowledge or belief. The deposition thus taken may be also read in case of the death of the witness.

SEC. 408. When a deposition has been once taken, it may be read in any stage of the same action or proceeding by either party, and shall then be deemed the evidence of the party reading it.

May be read
by either
party.

CHAPTER 5. OF DEPOSITIONS TAKEN OUT OF THIS TERRITORY.

SEC. 409. The testimony of a witness out of this Territory may be taken by deposition in an action at any time after the service of the summons or the appearance of the defendant, and in a special proceeding, at any time after a question of fact has arisen therein.

Taken out of
the Territory.

SEC. 410. The deposition of a witness out of this Territory shall be taken upon commission issued from the Court, under the seal of the Court, upon an order of the Judge or Court, on the application of either party, upon five days' previous notice to the other. It shall be issued to a person agreed upon by the parties, or if they do not agree, to any Judge or Justice of the Peace selected by the officer granting the commission, or to a Commissioner appointed by the Governor of this Territory, to take affidavits and depositions in the States or Territories.

How taken.

SEC. 411. Such proper interrogatories, direct and cross, as the respective parties may prepare, to be settled, if the parties disagree as to their form, by the Judge or officer granting the order for the commission, at a day fixed in the order, or at the time of granting the order for commission, may be annexed to the commission, or when the parties agree to that mode, the examination may be without written interrogatories.

Settling inter-
rogatories.

SEC. 412. The commission shall authorize the Commissioner to administer an oath to the witness, and to take his deposition in answer to the interrogatories, or when the examination is to be without interrogatories in respect to the question in dispute, and to certify the deposition to the Court, in a sealed envelope directed to the Clerk or other person designed or agreed upon, and forwarded to him by mail or other usual channel of conveyance.

Commission,
what to
authorize.

SEC. 413. A trial or other proceeding shall not be post-

Postponement
of trial on
non-return.

poned by reason of a commission not returned, except upon evidence satisfactory to the Court that the testimony of the witness is necessary, and that proper diligence has been used to obtain it.

CHAPTER 6.—OF PROCEEDINGS TO PERPETUATE TESTIMONY.

Testimony,
how perpetu-
ated.

SEC. 414. The testimony of a witness may be taken and perpetuated as provided in this Chapter.

Proceedings.

SEC. 415. The applicant shall present to a Judge a petition, verified by the oath of the applicant, stating: First—That the applicant expects to be a party to an action in a Court in this Territory, and in such case the name or names of the person or persons whom he expects will be adverse parties; or, Second—That the proof of some fact or facts is necessary to perfect the title to the property in which he is interested, or to establish marriage, descent, heirship, or any other matter which it may hereafter become material to establish, though no suit may at the time be anticipated, or if anticipated, he may not know the parties to such suit; and, Third—The name of the witness to be examined and his place of residence, and a general outline of the facts expected to be proved.

Same.

SEC. 416. The Judge to whom such petition is presented shall make an order allowing the examination before any Judge of a Court of Record and prescribing the notice to be given, which notice, if the parties are known and reside in this Territory, shall be personally served on them, and if unknown or non-residents, such notice shall be served on the Clerk of the County where the property to be affected by such testimony is situated, and a copy thereof published in some newspaper, to be designated by the Judge making the order.

Same.

SEC. 417. Upon proof of the service of the notice as provided in the last Section, it shall be the duty of the Judge, before whom the testimony is ordered to be taken, to proceed to take the testimony of the witnesses named in said petition, upon the facts therein set forth, and the taking of the same may be continued from time to time, in the discretion of the Judge.

Same.

SEC. 418. The examination shall be by question and answer, unless the parties otherwise agree. The testimony, when completed, shall be carefully read to and subscribed by the witness, then certified by the Judge, and immediately thereafter filed in the office of the Clerk of the Court of the County where it was taken, together with the order for the examination of the witnesses, the petition on which the same was granted, and the proof of the service of the notice.

Effect of
affidavit.

SEC. 419. The affidavits or other proof filed with the testimony, or certified copies thereof, shall be *prima facie* evidence of the facts stated therein.

Depositions,
when to be
used as
evidence.

SEC. 420. If the trial be had between the persons named in the petition as parties expectant, or their successors in interest, or between any parties wherein it may be material to establish

the facts which such testimony proves or tends to prove, upon proof of the death or insanity of the witness, or of his inability to attend the trial by reason of age, sickness or settled infirmity, the testimony, or certified copies thereof, may be used by either party, subject to all legal objections. But if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was stated at the examination.

CHAPTER 7.—ADMINISTRATION OF OATHS AND AFFIRMATIONS.

SEC. 421. Every Court of this Territory, every Judge or Clerk of any Court, every Justice of the Peace, and every Notary Public, and every officer authorized to take testimony, or to decide upon the evidence in any proceeding, shall have power to administer oaths or affirmations.

Who authorized to administer oaths.

SEC. 422. When a person is sworn who believes in any other than the Christian religion, he may be sworn according to the peculiar ceremonies of his religion, if there be any such.

How administered.

SEC. 423. Any witness who desires it may, at his option, instead of taking an oath, make his solemn affirmation, or declaration, by assenting, when addressed in the following form: "You do solemnly affirm that the evidence you shall give in this issue, (or matter) pending between _____, and _____, shall be the truth, the whole truth, and nothing but the truth." Assent to this affirmation shall be made by the answer "I do." A false affirmation or declaration shall be deemed perjury equally with a false oath.

Affirmation, form of.

CHAPTER 8.—INSPECTION OF DOCUMENTS AND MISCELLANEOUS PROVISIONS AS TO RECORDS AND WRITINGS.

SEC. 424. Any Court in which an action is pending, or a Judge thereof may, upon notice, order either party to give to the other within a specified time a copy, or permission to take a copy of any book, document or paper in his possession, or under his control, containing business accounts or transactions of a pecuniary character relating to the merits of the action, or the defence therein. If compliance with the order be refused, the Court may exclude the book, document, or paper from being given in evidence, or if wanted as evidence by the party applying, may direct the jury to presume it to be such as he alleges it to be; and the Court may also punish the party refusing for contempt. This Section shall not be construed to prevent a party from compelling another to produce such books, papers or documents, when he is examined as a witness, as are specified in Section Three Hundred and Eighty-Six.

Court may order party to give copy, etc.

SEC. 425. There shall be no evidence of the contents of a writing, other than the writing itself, except in the following cases: First—When the original has been lost or destroyed;

Evidence of contents of writing.

in which case proof of the loss or destruction shall first be made. Second—When the original is in the possession of the party against whom the evidence is offered, and he fails to produce it after reasonable notice. Third—When the original is a record or other document in the custody of a public officer, or officer of a corporation. Fourth—When the original has been recorded and a certified copy of the record is made evidence by statute. Fifth—When the original consists of numerous accounts or other documents which cannot be examined in Court without great loss of time, and the evidence sought from them is only the general result of the whole.

Alteration of
writing to be
accounted for.

SEC. 426. The party producing a writing as genuine, which has been altered; or appears to have been altered after its execution, in a part material to the question in dispute, and such alteration is not noted on the writing, shall account for the appearance or alteration. He may show that the alteration was made by another without his concurrence, or was made with the consent of the parties affected by it, or otherwise properly or innocently made. If he do that, he may give the writing in evidence, but not otherwise.

Judicial
record, how
proved.

SEC. 427. A judicial record of this Territory, of the United States, or of any State or Territory, may be proved by the production of the original, or a copy thereof certified by the Clerk, or other person having the legal custody thereof, under the seal of the Court, to be a true copy of such record.

Same.

SEC. 428. The records and judicial proceedings of the Courts of any State, of the United States, or of any Territory, may be proved or admitted in the Courts of this Territory by the attestation of the Clerk and the seal of the Court annexed, if there be a seal, together with a certificate of the Judge, Chief Justice or Presiding Magistrate, as the case may be, that the said attestation is in due form.

Judicial
record of
foreign
country, how
proved.

SEC. 429. A judicial record of a foreign country may be proved by the production of a copy thereof, certified by the Clerk, with the seal of the Court annexed, if there be a Clerk and seal, or by the legal keeper of the record, with the seal of his office annexed, if there be a seal, to be a true copy of such record, together with a certificate of a Judge of the Court, that the person making the certificate is the Clerk of the Court, or the legal keeper of the record, and in either case that the signature is genuine, and the certificate in due form; and also together with the certificate of the Minister or Ambassador of the United States, or of a Consul of the United States, in such foreign country, that there is such a Court, specifying generally the nature of its jurisdiction, and verifying the signature of the Judge and Clerk, or other legal keeper of the record.

Copy of when
admissible.

SEC. 430. A copy of the judicial record of a foreign country shall also be admissible in evidence upon proof: First—That the copy offered has been compared by the witness with the original, and is an exact transcript of the whole of it. Second—That such original was in the custody of the Clerk of the Court or other legal keeper of the same; and, Third—That the copy is duly attested by a seal, which is

proved to be the seal of the Court where the record remains, if it be the record of a Court, or if there be no such seal, or if it be not a record of a Court, by the signature of the legal keeper of the original.

SEC. 431. Printed copies in volumes of Statutes, code or other written law, enacted by any State or Territory, or foreign government, purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law, in the Courts and judicial tribunals of such State, Territory, or Government, shall be admitted by the Courts and officers of this Territory on all occasions as presumptive evidence of such laws.

Printed
volumes of
statutes to be
admitted as
evidence.

SEC. 432. A seal of a Court or public office when required to any writ or process, or proceeding, or to authenticate a copy of any record or document, may be impressed with wax, wafer, or any other substance, and then attached to the writ, process, or proceeding, or to the copy of the record or document, or it may be impressed on the paper alone.

Seal of Court,
how impressed

TITLE XII.

Of the Writ of Certiorari and of Mandamus.

CHAPTER I.—THE WRIT OF CERTIORARI OR REVIEW.

SEC. 433. The writ of certiorari may be denominated the writ of review.

Denomination

SEC. 434. This writ may be granted on application by any Court of this Territory, except a Justice's, or Alderman's or Mayor's Court; the writ shall be granted in all cases when an inferior tribunal, board, or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board, or officer, and there is no appeal, nor in the judgment of the Court, any plain, speedy and adequate remedy.

By what
Court, and in
what cases
granted.

SEC. 435. The application shall be made on affidavit by the party beneficially interested, and the Court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

Application
for, how
made.

SEC. 436. The writ may be directed to the inferior tribunal, board, or officer, or to any other person having the custody of the record or proceedings to be certified. When directed to a tribunal, the Clerk, if there be one, shall return the writ with the transcript required.

To whom
directed.

SEC. 437. The writ of review shall command the party to whom it is directed to certify fully to the Court issuing the writ, at a specified time and place, and annex to the writ a transcript of the record and proceeding, (describing or referring to them with convenient certainty) that the same may be reviewed by the Court, and requiring the party in the mean time to desist from further proceedings in the matter to be reviewed.

Writ, what to
command.

SEC. 438. If a stay of proceedings be not intended, the

Same.	words requiring the stay shall be omitted from the writ. These words may be inserted or omitted, in the sound discretion of the Court, but if omitted, the power of the inferior Court or officer shall not be suspended nor the proceedings stayed.
How served.	SEC. 439. The writ shall be served in the same manner as a summons in a civil action, except when otherwise expressly directed by the Court.
Review upon extent of.	SEC. 440. The review upon this writ shall not be extended further than to determine whether the inferior tribunal, board, or officer has regularly pursued the authority of such tribunal, board, or officer.
Return of judgment.	SEC. 441. If the return to the writ be defective, the Court may order a further return to be made. When a full return has been made, the Court shall proceed to hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment, either affirming or annulling or modifying the proceedings below.
Copy to be transmitted.	SEC. 442. A copy of the judgment, signed by the Clerk, shall be transmitted to the inferior tribunal, board, or officer having the custody of the record or proceeding certified up.
Judgment roll.	SEC. 443. A copy of the judgment, signed by the Clerk, entered upon or attached to the writ and return, shall constitute the judgment roll. If the proceeding be had in any other than the Supreme Court, an appeal may be taken from the judgment in the same manner and upon the same terms as from a judgment in a civil action.
Appeal.	

CHAPTER 2.—THE WRIT OF MANDATE OR MANDAMUS.

Writ denominated.	SEC. 444. The writ of mandamus may be denominated the writ of mandate.
By what Court and in what cases may be issued.	SEC. 445. It may be issued by any Court in this Territory except a Justice's, to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person.
	SEC. 446. This writ shall be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It shall be issued upon affidavit, on the application of the party beneficially interested.
To be either alternative or peremptory.	SEC. 447. The writ shall be either alternative or peremptory. The alternative writ shall state generally the allegation against the party to whom it is directed, and command such party, immediately after the receipt of the writ, or at some other specified time, do the act required to be performed, or to show cause before the Court, at a specified time and place, why he has not done so. The peremptory writ shall be in a similar form, except that the words requiring the party to

show cause why he has not done as commanded, shall be omitted, and a return day shall be inserted.

SEC. 448. When the application to the Court is made without notice to the adverse party, and the writ be allowed, the alternative shall be first issued; but if the application be upon due notice; and the writ be allowed, the peremptory may be issued in the first instance. The notice of the application, when given, shall be at least ten days. The writ shall not be granted by default. The case shall be heard by the Court, whether the adverse party appear or not.

When alternative or peremptory to be issued.

SEC. 449. On the return day of the alternative, or the day on which the application of the writ is noticed, or such further day as the Court may allow, the party on whom the writ or notice shall have been served may show cause by answer under oath, made in the same manner as an answer to a complaint in a civil action.

Answer to writ.

SEC. 450. If an answer be made, which raises a question as to a matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for the writ is based, the Court may, in its discretion, order the question to be tried before a jury, and postpone the argument until such trial can be had, and the verdict certified to the Court. The question to be tried shall be distinctly stated in the order for trial, and the County shall be designated in which the same shall be had. The order may also direct the jury to assess any damages which the applicant may have sustained in case they find for him.

When Court may order trial by jury.

SEC. 451. On the trial the applicant shall not be precluded by the answer of any valid objection to its sufficiency, and may countervail it by proof either in direct denial or by way of avoidance.

Objection to sufficiency of answer.

SEC. 452. If either party be dissatisfied with the verdict of the jury, he may move for a new trial upon a statement prepared as provided in Section One Hundred and Ninety-Five. The motion for a new trial may, upon reasonable notice, be brought on before the Judge of the Court in which the cause was tried, either in term or vacation. If a new trial be granted, the jury shall, within five days thereafter, unless the parties agree on a longer time, be summoned to try the issue. After a second verdict in favor of the same party, a new trial shall not be had.

New trial.

SEC. 453. If no notice for a new trial be given, or if given be denied, the Clerk, within five days after the rendition of the verdict, or denial of the motion, shall transmit to the Court in which the application for the writ is pending, a certified copy of the verdict, attached to the order of trial; after which, either party may bring on the argument of the application, upon reasonable notice to the adverse party.

Duty of Clerk to transmit verdict.

Argument of application.

SEC. 454. If no answer be made, the case shall be heard on the papers of the applicant. If an answer be made which does not raise a question such as is mentioned in Section Four Hundred and Fifty, but only such matters as may be explained

Same.

or avoided by a reply, the Court may, in its discretion, grant time for replying. If the answer, or answer and reply, raise only questions of law, or put in issue immaterial statements, not affecting the substantial rights of the parties, the Court shall proceed to hear, or fix a day for hearing the argument of the case.

Judgment,
Execution.

SEC. 455. If judgment be given for the applicant, he shall recover the damages which he shall have sustained, as found by the jury; or as may be determined by the Court or referees, upon a reference to be ordered, together with costs; and for such damages and costs, an execution may issue, and peremptory mandate shall also be awarded without delay.

Writ, how
served.

SEC. 456. The writ shall be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the Court.

Refusal for
disobeying
peremptory
mandamus.

SEC. 457. When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, board or person, if it appear to the Court that any member of such tribunal, corporation or board, or such person, upon whom the writ has been personally served, has, without just excuse, refuse or neglected to obey the same, the Court may, upon motion, impose a fine not exceeding five hundred dollars. In case of persistence in a refusal of obedience, the Court may order the party to be imprisoned for a period not exceeding one month, and may make any orders necessary and proper for the complete enforcement of the writ.

TITLE XIII.

Of Contempts and their Punishments.

Contempt,
what deemed.

SEC. 458. The following acts or omissions shall be deemed contempts: First—Disorderly, contemptuous or insolent behavior towards the Judge, whilst holding Court, or engaged in his judicial duties at Chambers, or towards referees or arbitrators whilst sitting on a reference or arbitration, or other judicial proceeding. Second—A breach of the peace, boisterous conduct or violent disturbance in the presence of the Court or in its immediate vicinity, tending to interrupt the due course of a trial or other judicial proceeding. Third—Disobedience or resistance to any lawful writ, order, rule or process issued by the Court or Judge at chambers. Fourth—Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness. Fifth—Rescuing any person or property, in the custody of an officer, by virtue of an order of process of such Court, or Judge at chambers. Sixth—Disobedience to the order or direction of the Court, made pending the trial of an action, in speaking to or in the presence of a juror, concerning an action in which such juror has been impaneled to determine, or in any manner approaching or interfering with the intent to influence his verdict.

When
punishable
summarily.

SEC. 459. When a contempt is committed in the immediate view and presence of the Court, or Judge at Chambers,

it may be punished summarily, for which an order shall be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed. When the contempt is not committed in the immediate view and presence of the Court, or Judge at Chambers, an affidavit shall be presented to the Court, or Judge, of the facts constituting the contempt, or a statement of the facts by the referees or arbitrators.

SEC. 460. When the contempt is not committed in the immediate view and presence of the Court, or Judge a warrant of attachment may be issued to bring the person charged to answer, or, without a previous arrest, a warrant of commitment may, upon notice, or upon an order to show cause, be granted; and no warrant of commitment shall be issued without such previous attachment to answer, or such notice or order, to show cause.

Attachment
for, when
issuable.

SEC. 461. Whenever a warrant of attachment is issued pursuant to this Chapter, the Court, or Judge, shall direct, by an endorsement on such warrant, that the person charged may be let to bail for his appearance, in an amount to be specified in such endorsement.

Bail.

SEC. 462. Upon executing the warrant of attachment, the officer shall keep the person in custody, bring him before the Court or Judge, and detain him until an order be made in the premises, unless the person arrested entitle himself to be discharged, as provided in the next Section.

Duty of
Sheriff.

SEC. 463. When a direction to let the person arrested to bail is contained in the warrant of attachment, or endorsed thereon, he shall be discharged from the arrest, upon executing and delivering to the officer, at any time before the return day of the warrant, a written undertaking, with two sufficient sureties, to the effect, that the person arrested will appear on the return day of the warrant, and abide the order of the Court or Judge thereupon; or they will pay as may be directed, the sum specified in the warrant.

Discharge
from arrest.

SEC. 464. The officer shall return the warrant of arrest and the undertaking, if any, received by him from the person arrested, by the return day specified therein.

Return of
warrant.

SEC. 465. When the person arrested has been brought up, or has appeared, the Court or Judge shall proceed to investigate the charge, and shall hear any answer which the person arrested may make to the same, and may examine witnesses for or against him, for which an adjournment may be had from time to time, if necessary.

Investigation
of charges.

SEC. 466. Upon the answer and evidence taken, the Court, or Judge, shall determine whether the person proceeded against is guilty of the contempt charged; and if it be adjudged that he is guilty of the contempt, a fine may be imposed on him not exceeding two hundred dollars, or he may be imprisoned not exceeding five days, or both.

Penalty, if
found guilty.

SEC. 467. When the contempt consists in the omission to perform an act which is yet in the power of the person to per-

Same, for omission to perform certain acts within power, Indictment.

form, he may be imprisoned until he have performed it, or until released by the Court, and, in that case, the act shall be specified in the warrant of commitment.

SEC. 468. Persons proceeded against, according to the provisions of this Chapter, shall also be liable to indictment for the same misconduct, if it be an indictable offense, but the Court before which a conviction is had on the indictment, in passing sentence, shall take into consideration the punishment before inflicted.

Proceedings when defendant does not appear.

SEC. 469. When the warrant of arrest has been returned served, if the person arrested do not appear on the return day, the Court, or Judge, may issue another warrant of arrest, or may order the undertaking to be prosecuted, or both. If the undertaking be prosecuted, the measure of damages in the action shall be the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the warrant was issued, and the costs of the proceeding.

Duty of officer having person in custody.

SEC. 470. Whenever, by the provisions of this Chapter, an officer is required to keep a person arrested, on a warrant of attachment, in custody, and to bring him before a Court, or Judge, the inability, from illness or otherwise, of the person to attend, shall be a sufficient excuse for not bringing him up; and the officer shall not confine a person arrested upon the warrant, in a prison, or otherwise restrain him of personal liberty, except so far as may be necessary to secure his personal attendance.

Contempt, punishment for.

SEC. 471. In cases of contempt, the punishment shall be by fine or imprisonment, or both, but no fine shall exceed the sum of two hundred dollars, and no imprisonment shall exceed the period of five days, except as provided in Section Four Hundred and Sixty-Seven.

TITLE XIV.

Of Costs.

Compensation of attorneys, etc.

SEC. 472. The measure and mode of compensation of attorneys and counselors shall be left to the agreement of the parties, but there may be allowed to the prevailing party in any action in the courts, his costs in the action or special proceeding in the nature of an action.

When allowed of course to plaintiff.

SEC. 473. Costs shall be allowed of course to the plaintiff, upon a judgment in his favor in the following cases: First—In an action for the recovery of real property. Second—In an action to recover the possession of personal property, when the value of the property amounts to one hundred dollars or over, such value shall be determined by the jury, Court or referee by whom the action is tried. Third—In an action for the recovery of money or damages, where plaintiff recovers one hundred dollars or over. Fourth—In a special proceeding in the nature of an action.

SEC. 474. When several actions are brought on one bond, undertaking, promissory note, bill of exchange, or other

instrument in writing, or in any other case for the same cause of action, against several parties who might have been joined as defendants in the same action, no costs shall be allowed to the plaintiff in more than one of such actions, which may be at his election, if the party proceeded against in the other actions were at the commencement of the previous action openly within this Territory.

When several actions on one bond, etc.

SEC. 475. Costs shall be allowed of course to the defendant upon a judgment in his favor in the actions mentioned in Section Four Hundred and Seventy-Three, and in a special proceeding in the nature of an action.

When allowed of course to defendant.

SEC. 476. In other actions than those mentioned in Section Four Hundred and Seventy-Three, costs may be allowed or not, and if allowed, may be apportioned between the parties, on the same or adverse sides, in the discretion of the Court; but no costs shall be allowed in an action for the recovery of money or damages when the plaintiff recovers less than one hundred dollars, nor in an action to recover the possession of personal property, when the value of the property is less than one hundred dollars.

When allowed or not.

SEC. 477. When there are several defendants, in the actions mentioned in Section Four Hundred and Seventy-Three, not united in interest, and making separate defenses, by separate answers, and the plaintiff fails to recover judgment against all, the Court shall award costs to such of the defendants as have judgment in their favor.

When plaintiff fails to recover against all defendants.

SEC. 478. In the following cases the costs of an appeal shall be in the discretion of the Court: First—When a new trial is ordered. Second—When a judgment is modified.

Appeal.

SEC. 479. The fees of referees shall be not exceeding five dollars to each, for every day spent in the business of the reference; but the parties may agree in writing upon any other rate of compensation, and thereupon such rate shall be allowed.

Referees.

SEC. 480. When an application is made to a Court or referee to postpone a trial, the payment of costs occasioned by the postponement, may be imposed, in the discretion of the Court or referee, as a condition of granting the same.

Costs when trial postponed.

SEC. 481. When in an action for the recovery of money only, the defendant alleges in his answer that before the commencement of the action, he tendered to the plaintiff the full amount to which he was entitled, and thereupon deposits in Court, for the plaintiff, the amount so tendered, and the allegation be found to be true, the plaintiff shall not recover costs; but shall pay costs to the defendant.

When defendant has tendered amount due.

SEC. 482. In an action prosecuted or defended by an executor, administrator, trustee of express trust, or a person expressly authorized by statute, costs may be recovered as in an action by, and against, a person prosecuting and defending in his own right; but such costs shall, by the judgment, be made chargeable only upon the estate, fund, or party represented, unless the Court shall direct the same to be paid by

In action where administrator, etc., is party.

the plaintiff or defendant, personally, for mismanagement or bad faith in the action or defense.

On review.

SEC. 483. When the decision of a Court of inferior jurisdiction in a special proceeding is brought before a Court of higher jurisdiction for a review in any other way than by appeal, the same costs shall be allowed as in cases on appeal, and may be collected by execution, or in such manner as the Court may direct, according to the nature of the case.

Memorandum
of, to be deliv-
ered to
Clerk.

SEC. 484. The party in whose favor judgment is rendered, and who claims his costs, shall deliver to the Clerk of the Court, within two days after the verdict or decision of the Court, a memorandum of the items of his costs in the action or proceeding, which memorandum shall be verified by the oath of the party or his attorney, stating that the items are correct, and that they have been necessarily incurred in the action or proceeding.

To be included
in judgment.

SEC. 485. The Clerk shall include in the judgment entered up by him, any interest in the verdict or decision of the Court or referee, from the time it was rendered or made, and the costs, if the same have been taxed or ascertained, and he shall, within two days after the same shall be taxed or ascertained, if not included in the judgment, insert the same in a blank to be left in the judgment for that purpose, and shall make a similar insertion of the costs in the copies and docket of the judgment.

Security for
costs.

SEC. 486. When a plaintiff in an action resides out of the Territory, or is a foreign corporation, security for the costs and charges which may be awarded against such plaintiff, may be required by the defendant. When required, all proceedings in the action shall be stayed until an undertaking, executed by two or more persons, be filed with the Clerk, to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action, not exceeding the sum of three hundred dollars. A new or an additional undertaking may be ordered by the Court, or Judge, upon proof that the original undertaking is insufficient security, and proceedings in the action stayed until such new or additional undertaking be executed and filed.

Same.

SEC. 487. Each of the sureties on the undertaking, mentioned in the last Section, shall annex to the same, an affidavit that he is a resident and householder or freeholder within the county, and is worth double the amount specified in the undertaking, over and above all his just debts and liabilities; exclusive of property exempt from execution.

Same.

SEC. 488. After the lapse of thirty days from the service of notice that security is required, or of an order for new or additional security, upon proof thereof, and that no undertaking, as required, has been filed, the Court, or Judge, may order the action to be dismissed.

TITLE XV.

Of Motions, Orders, Notices, Service of Papers, and Miscellaneous Provisions.

SEC. 489. Every direction of a Court, or Judge, made or entered in writing, and not included in a judgment, is denominated an order. An application for an order is a motion. Motions, &c.

SEC. 490. Motions shall be made in the Court in which the action is brought. Where to be made.

SEC. 491. When a written notice of a motion is necessary, it shall be given ten days before the time appointed for the hearing, but the Court, or Judge, may prescribe a shorter time. Notice of.

SEC. 492. When a notice of a motion is given, or an order to show cause is made returnable before a Judge out of Court, and at the time fixed for the motion, or on the return day of the order, the Judge is unable to hear the parties, the matter shall stand adjourned until the further order of the Court or Judge. Shall stand adjourned.

SEC. 493. Written notices and other papers, when required to be served on the party or an attorney, shall be served in the manner prescribed in the next three Sections, when not otherwise provided; but nothing in this Title shall be applicable to original or final process, or any proceedings to bring a party into contempt. Service of papers, how made.

SEC. 494. The service may be personal, by delivery to the party or his attorney, on whom the service is required to be made, or it may be as follows: First—If upon an attorney, it may be made during his absence from his office, by leaving the notice or other papers with his Clerk therein, or with a person having charge thereof, between the hours of eight in the morning and six in the afternoon, or by leaving them at the attorney's residence, with some person of suitable age and discretion, or by mail, directed to such attorney. Second—If upon a party, it may be made by leaving the notice or other paper at his residence, between the hours of eight in the morning and six in the evening, with some person of suitable age and discretion, or by mail, directed to such party. Same.

SEC. 495. Service by mail may be made, when the person making the service, and the person on whom it is to be made, reside at different places, between which there is a regular communication by mail. When served by mail.

SEC. 496. In case of service by mail, the notice or other paper shall be deposited in the post-office, addressed to the person on whom it is to be served, at his place of residence, and the postage paid, but the service shall not be deemed complete until the notice or other paper be received. And, in such case, the time of service shall be increased one day for every twenty-five miles distance between the place of deposit and place of address. Same.

SEC. 497. A defendant shall be deemed to appear in an

When defendant deemed to have appeared

action when he answers, demurs, or gives the plaintiff written notice of his appearance, or when an attorney gives notice of appearance for him. After appearance, a defendant, or his attorney, shall be entitled to notice of all subsequent proceedings of which notice is required to be given. But, where a defendant has not appeared, service of notice or papers need not be made upon him, unless he be imprisoned for want of bail.

Service after appearance, etc.

SEC. 498. When a plaintiff or a defendant who has appeared, resides out of the Territory, and has no attorney in the action or proceeding, the service may be made on the Clerk for him. But in all cases where a party has an attorney in the action or proceeding, the service of the papers, when required, shall be upon the attorney instead of the party, except of subpoenas, of writs, and other process issued in the suit, and of papers to bring him into contempt.

Successive actions on same contract

SEC. 499. Successive actions may be maintained upon the contract or transaction, whenever, after the former action, a new cause of action arises therefrom.

When may be consolidated.

SEC. 500. Whenever two or more actions are pending at one time between the same parties, and in the same Court, upon causes of action which might have been joined, the Court may order the actions to be consolidated into one.

Actions to determine adverse claim.

SEC. 501. An action may be brought by one person against another, for the purpose of determining an adverse claim which the latter makes against the former, for money or property, upon an alleged obligation; and also against two or more persons, for the purpose of compelling one to satisfy a debt due the other, for which the plaintiff is bound as security.

Register of Actions.

SEC. 502. The Clerk shall keep, among the records of the Court, a register of actions. He shall enter therein the title of the action, with brief notes under it, from time to time, of all papers filed, and proceedings had therein.

Referees, majority may act.

SEC. 503. When there are three referees, or three arbitrators, all shall meet, but two of them may do any act which might be done by all.

Time, how computed.

SEC. 504. The time within which an act is to be done, as provided in this Act, shall be computed by excluding the first day, and including the last. If the last day be Sunday, it shall be excluded.

Paper, without the title of the action.

SEC. 505. An affidavit, notice, or other paper, without the title of the action or proceeding in which it is made, or with a defective title, shall be as valid and effectual for any purpose as if duly entitled, if it intelligibly refer to such action or proceeding.

Cause of action in another State, etc.

SEC. 506. When a cause of action has arisen in a State, or other Territory, or in a foreign country, and by the laws thereof an action thereon cannot there be maintained against a person by reason of the elapse of time, an action thereon shall not be maintained against him in this Territory, except in favor of a citizen thereof who has held the cause of action from the time it accrued.

TITLE XVI.

Of Proceedings in Civil Cases, in Justices' Courts.

CHAPTER 1.—OF THE PARTIES AND THE TIME AND PLACE OF COMMENCING ACTIONS IN JUSTICES' COURTS.

SEC. 507. The provisions of Title One of this Act, as to parties to actions, shall be applicable to actions of which a Justices' Court has jurisdiction. Justices' Courts shall have jurisdiction of the following actions and proceedings: First—Of an action arising on contract for the recovery of money only, if the sum claimed, exclusive of interest, does not exceed one hundred dollars. Second—Of an action for damages for injury to the person, or for taking or detaining personal property, or for injuring real or personal property, if the damages claimed do not exceed one hundred dollars. Third—Of an action for a fine, penalty or forfeiture, not exceeding one hundred dollars, given by statute. Fourth—Of an action upon a bond, conditioned for the payment of money, not exceeding one hundred dollars, though the penalty exceed that sum, the judgment to be given for the sum actually due. When the payments are made by installments, an action may be brought for each installment as it becomes due. Fifth—Of an action upon a surety bond or undertaking, though the penalty exceed, if the amount claimed does not exceed, one hundred dollars. Sixth—Of an action to recover the possession of personal property, when the value of such property does not exceed one hundred dollars. Seventh—To take and enter judgment on the confession of a defendant when the amount confessed does not exceed one hundred dollars. Eighth—Of actions for the possession of lands and tenements where the relation of landlord and tenant exists. Ninth—Of proceedings respecting vagrants and disorderly persons. Tenth—Of suits for the collection of taxes, where the amount of the tax sued for does not exceed one hundred dollars. The jurisdiction conferred by this Section shall not extend to a civil action in which the title to real estate or mining claims or questions to boundaries of lands are involved, or to actions to enforce mechanic's liens, and if questions of title to real property be involved, or cases involving such questions shall be disposed of as hereafter provided in this Act. The Courts held by Justices of the Peace shall be denominated Justices' Courts. They shall have no terms, but shall always be open. Justices' Courts shall be held in their respective precincts.

SEC. 508. Parties in Justices' Courts may prosecute or defend in person or by attorney; and any person, on the request of a party, may act as his attorney, except that the Constable, by whom the summons or jury process was served, shall not appear or act on the trial in behalf of either party.

SEC. 509. No person shall be held to answer to any summons issued against him from a Justices' Court, in a civil

Parties to
actions in
Justices'
Courts.

Jurisdictions.

May appear
in person or
by attorney.

Jurisdiction
of person.

action, in any precinct other than the one in which he shall reside, except in the cases following: First—When there shall be no Justices' Court for the precinct in which the defendant may reside, or no Justice competent to act on the case. Second—When two or more persons shall be jointly, or jointly and severally, bound in any debt or contract, or otherwise jointly liable in the same action and reside in different precincts of the same County, or in different Counties, the plaintiff may prosecute his action in a Justices' Court of the precinct in which any of the debtors, or other persons liable, may reside. Third—In cases of injury to the person, or to real or personal property, the plaintiff may prosecute his action in the precinct where the injury was committed. Fourth—When personal property unjustly taken or detained is claimed, or damages therefor are claimed, the plaintiff may bring his action in any precinct in which the property may be found, or in which the property was taken. Fifth—When the defendant is a non-resident of the County, he may be sued in any precinct wherein he may be found. Sixth—When a person has contracted to perform any obligation at a particular place, and resides in another precinct, he may be sued in the precinct in which such obligation is to be performed, or in which he resides.

SEC. 510. Judgment upon confession may be entered up in any Justices' Court in the Territory specified in the confession. The provisions of Title Ten, Chapter Two, of this Act shall apply to such confession, the word "Justice" being substituted for that of Clerk wherever it may occur.

Further
Jurisdiction.

SEC. 511. Justices' Courts shall have jurisdiction of an action upon the voluntary appearance of the parties without summons, without regard to their residences or the place where the cause of action arose, or the subject matter of action may exist.

CHAPTER 2.—SUMMONS, ARREST, ATTACHMENT AND CLAIM OF PERSONAL PROPERTY.

Actions how
commenced.

SEC. 512. Actions in Justices' Courts shall be commenced by filing a copy of the account, note, bill, bond or instrument upon which the action is brought, or a concise statement in writing of the cause of action, and the issuance of a summons thereon, or by the voluntary appearance and pleadings of the parties without summons. In the latter case the action shall be deemed commenced at the time of appearance.

Guardian,
how appointed

SEC. 513. When a guardian is necessary, he shall be appointed by the Justice, as follows: First—If the minor be a plaintiff, the appointment shall be made before the summons is issued, upon the application of the minor, if he be of the age of fourteen years or upwards; if under that age, upon the application of some relative or friend. The consent in writing of the guardian to be appointed, and to be responsible for costs, if he fail in the action, shall be first filed with the Justice.

Second—If the minor be defendant, the guardian shall be appointed at the time the summons is returned or before the pleadings. It shall be the right of the minor to nominate his own guardian, if the minor be over fourteen years of age, and the proposed guardian be present and consent in writing to be appointed. Otherwise the Justice may appoint any suitable person who gives such consent.

SEC. 514. The summons shall be addressed to the defendant by name, or if his name be unknown, by a fictitious name, and shall summon him to appear before the Justice at his office, naming its precinct, and at a time specified therein, to answer the complaint of the plaintiff, for a cause of action therein described, in general terms, sufficient to apprise the defendant of the nature of the claim against him; and, in action for money or damages, shall state the amount for which the plaintiff will take judgment, if the defendant fail to appear and answer. It shall be subscribed by the Justice before whom it is returnable.

Summons,
form of.

SEC. 515. The time mentioned in the summons for the appearance of the defendant, and the time of service shall be as follows: First—When the summons is accompanied with an order to arrest the defendant, it shall be returnable immediately. Second—When the defendant is not a resident of the precinct, or when the plaintiff is not a resident, it shall be returnable not more than two days from its date, and shall be served at least one day before the time for appearance, except in cases where the summons is to be served by publication, or out of the Territory, or by posting notices thereof, when it shall be made returnable at any time designated by the Justice, not exceeding sixty days from the date of its issuance. Third—In all other cases it shall be returnable in not less than two or more than ten days from its date, and shall be served at least two days before the time for appearance.

Time of
service and
appearance.

SEC. 516. The summons shall be served by the Sheriff, or a Constable of the County, or by any male citizen of the United States over twenty-one years of age, as follows: First—If the action be against a corporation, by a delivery of a copy to the President, or other head of the corporation, or to the secretary, cashier or managing agent thereof, or when no such officer resides in the County, to a director resident therein. Second—If against a minor under the age of fourteen years, by delivery of a copy to such minor, and also to his father, mother or guardian; or if there be none within the County, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is. Third—If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, by delivery of a copy to such guardian. Fourth—In all other cases, by delivery of the copy to the defendant personally.

How Served.

SEC. 517. Sections Thirty to Thirty-Five, both inclusive, of Title Three of this Act are hereby made applicable to Justices' Courts, and proceedings therein—the word "Justice" being inserted wherever the word "Clerk" or "Judge" occurs,

Sections made
applicable to
Justices'
Courts.

and the word "Constable" inserted wherever the words "Territorial Marshal" or "Sheriff" occur, and the word "complaint" whenever it occurs being stricken out and disregarded: *provided*, that in actions upon contracts for the payment of money, the Justice may, in his discretion, instead of ordering publication of summons, or the appointment of an attorney to appear for the defendant, order the service of the summons to be made by posting copies thereof in three public places in the precinct, within one day after the same is issued.

Provide.

When order to arrest may be indorsed, etc.

SEC. 518. An order to arrest the defendant may be endorsed on a summons issued by the Justice, and the defendant may be arrested thereon by the Sheriff, or Constable, at the time of serving the summons, and brought before the Justice, and there detained until duly discharged, in the following cases, arising after the passage of this Act: First—In an action for the recovery of money or damages on a cause of action arising upon a contract, express or implied, when the defendant is about to depart from the County or Territory, with the intent to defraud his creditors; or where the action is for the wilful injury to the person, or for taking, detaining or injuring personal property. Second—In an action for a fine or penalty, or for money or property embezzled, or fraudulently misapplied, or converted to his own use by an attorney, factor, broker, agent or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity. Third—When the defendant has been guilty of a fraud in contracting the debt, or incurring the obligation for which the action is brought. Fourth—When the defendant has removed, concealed or disposed of his property, or is about to do so, with intent to defraud his creditors.

Undertaking, etc.

SEC. 519. Before an order of arrest shall be made, the party applying shall prove to the satisfaction of the Justice, by the affidavit of himself or some other person, the facts on which the application is founded. The plaintiff shall also execute and deliver to the Justice a written undertaking, with two or more sureties, to the effect that if the defendant recover judgment, the plaintiff will pay to him all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least one hundred dollars.

When defendant may be taken before another Justice.

SEC. 520. The defendant, immediately upon being arrested, shall be taken to the office of the Justice who made the order, and if he be absent or unable to try the action, or if it be made to appear to him, by the affidavit of the defendant, that he is a material witness in the action, the officer shall immediately take the defendant before a Justice of that, or an adjoining precinct of the County, who shall take cognizance of the action, and proceed thereon as if the summons had been issued and the order of arrest made by him.

Duty of officer making arrest

SEC. 521. The officer making the arrest shall immediately give notice thereof to the plaintiff, or his attorney or agent, and endorse on the summons, and subscribe a certificate, stat-

ing the time of serving the same, the time of the arrest, and of his giving notice to the plaintiff.

SEC. 522. The officer making an arrest shall keep the defendant in custody until duly discharged by order of the Justice. Same.

SEC. 523. The defendant under arrest, on his appearance with the officer, may demand a trial immediately; and upon such demand being made, the trial shall not be delayed beyond twelve hours, except by the trial of another action pending at the time, or he may have an adjournment, and be discharged on giving bail, as provided in the next Section. An adjournment at the request of the plaintiff, beyond twelve hours, shall discharge the defendant from arrest; but the action may proceed notwithstanding; and the defendant shall be subject to arrest, on the execution, in the same manner as if he had not been so discharged. Defendant under arrest may demand immediate trial.

SEC. 524. If the defendant, on his appearance, demand an adjournment, the same shall be granted, on condition that he execute, and file with the Justice, an undertaking, with two or more sufficient sureties, to be approved by the Justice, to the effect that he will render himself amenable to the process of the Court during the pendency of the action, and such as may be issued, to enforce the judgment therein, or that the sureties will pay to the plaintiff the amount of any judgment which he may recover in the action. On filing the undertaking specified in this Section, the Justice shall order the defendant to be discharged from custody. How defendant may obtain adjournment.

SEC. 525. The following Sections of Chapter One, Title Five, of this Act shall be applicable to Justices' Courts and proceedings therein, to wit: Eighty to Eighty-Five, both inclusive; and the following of Chapter Two, same Title, to wit: Ninety-Nine to One Hundred and Two, both inclusive; One Hundred and Four and One Hundred and Seven to One Hundred and Ten, both inclusive; the word "Justice" being inserted in lieu of "Clerk" or "Judge" wherever they occur, and the word "Constable" in lieu of the words "Territorial Marshal" or "Sheriff;" also Sections One Hundred and Twenty-Three to One Hundred and Forty-Four, both inclusive; the word "Justice" being inserted in lieu of that of "Judge" and "Clerk" whenever it may occur: *provided*, that the writ of attachment shall be directed to the "Sheriff" or any Constable of any County of this Territory, and may be executed by the Constable, and wherever the word "Sheriff" occurs the word "Constable" shall be deemed to be also inserted. Sections applicable to Justices' Courts.
Proviso.

CHAPTER 3.—PLEADINGS AND TRIAL.

SEC. 526. The pleadings in Justices' Courts shall be: Pleadings defined.
First—The complaint by the plaintiff, stating the cause of action. Second—The answer by the defendant, stating the ground of the defense.

SEC. 527. The pleadings shall be in writing, and verified

When to be in writing and verified.

Proviso.

Oral to be entered, written to be filed.

Complaint, what to state.

Answer, what to contain.

When the cause arises on instrument for payment of money.

Instruments, genuineness to be admitted.

Objections to pleadings.

Variance.

by the oath of the party, his agent or attorney, when the action is: First—For the foreclosure of any mortgage or the enforcement of any lien on personal property. Second—Of actions for the possession of lands or tenements: *provided, always*, that the amount claimed does not exceed one hundred dollars.

SEC. 528. When the pleadings are oral, the substance of them shall be entered by the Justice in his docket; when in writing, they shall be filed in his office, and a reference made to them in the docket. Pleadings shall not be required to be in any particular form, but shall be such as to enable a person of common understanding to know what is intended.

SEC. 529. The complaint shall state in a plain and direct manner the facts constituting the cause of action.

SEC. 530. The answer may contain a denial of any of the material facts stated in the complaint which the defendant believes to be untrue, and also a statement, in a plain and direct manner, of any other facts constituting a defense, or a counter claim upon which an action may be brought by the defendant against the plaintiff in a Justice's Court.

SEC. 531. A statement in answer that the party has not sufficient knowledge or information in respect to a particular allegation in the previous pleading of the adverse party, to form a belief, shall be deemed equivalent to a denial.

SEC. 532. When the cause of action or counter claim arises upon an account or instrument for the payment of money only, it shall be sufficient for the party to deliver a copy of the account or instrument to the Court, and to state that there is due to him thereupon, from the adverse party, a specified sum, which he claims to recover or set off. The Court may, at the time of the pleading, require that the original account or instrument be exhibited to the inspection of the adverse party, and a copy to be furnished, or if it be not so exhibited, and a copy so furnished, may prohibit its being afterwards given in evidence.

SEC. 533. If the plaintiff annex to his complaint, or file with the Justice at the time of issuing the summons, a copy of the promissory note, bill of exchange, or other written obligation for the payment of money, upon which the action is brought, the defendant shall be deemed to admit the genuineness of the signatures of the makers, indorsers or assignors thereof, unless he specifically deny the same in his answer, and verify the answer by his oath.

SEC. 534. Either party may object to a pleading of his adversary, or to any part thereof, that it is not sufficiently explicit to enable him to understand it, or that it contains no cause of action or defense, although it be taken as true. If the Court deem the objection well founded, it shall order the pleading to be amended, and if the party refuse to amend, the defective pleading shall be disregarded.

SEC. 535. A variance between the proof on the trial and the allegations in a pleading shall be disregarded as immaterial, unless the Court be satisfied that the adverse party has been misled to his prejudice thereby.

SEC. 536. The pleadings may be amended at any time before the trial, to supply a deficiency or omission, when by such amendment substantial justice will be promoted. If the amendment be made after the issue, and it be made to appear to the satisfaction of the Court, by oath, that an adjournment is necessary to the adverse party in consequence of such amendment, an adjournment shall be granted. The Court may also, in its discretion, require as a condition of an amendment, the payment of costs to the adverse party, to be fixed by the Court, not exceeding ten dollars, but such payment shall not be required unless an adjournment is made necessary by the amendment, nor shall an amendment be allowed after a witness is sworn on the trial, when an adjournment thereby will be made necessary.

Amendments
of pleadings.

SEC. 537. The parties shall not be at liberty to give evidence upon any question which involves the title to, or the right of possession of real property or mining claims, or upon any question involving boundaries to land, or the legality of any tax, impost, assessment, toll or municipal fine, nor shall any issue presenting such question be tried by the Justice, and if it appear from the plaintiff's own showing, on the trial, or from the answer of the defendant, verified by his oath, that the determination of the action will necessarily involve either of such questions, the Justice shall suspend all further proceedings in the action, and certify the pleadings, or if the pleadings be oral, a transcript of the same from his docket to the Probate Court for the County, and from the time of filing such proceedings or transcript with the Clerk of the Probate Court, such Probate Court shall have over the action the same jurisdiction as if it were originally commenced therein.

Title to real
property,
evidence not
to be given.

SEC. 538. If, at any time before the trial, it appear to the satisfaction of the Justice before whom the action is brought, by affidavit of either party, that such Justice is a material witness for either party, or if either party make affidavit that he has reason to believe, and does believe, that he cannot have a fair and impartial trial before such Justice, by reason of the interest, prejudice or bias of the Justice, on stating the facts upon which such belief is founded, the action shall be transferred to some other Justice of the same or adjoining precinct, in the same County, and in case a jury be demanded, and affidavit of either party is made that he cannot have a fair and impartial trial, on account of the bias or prejudice of the citizens of the precinct against him, the action shall be transferred to some other Justice of the Peace in the County, but only one transfer shall be allowed to either party. The Justice to whom an action may be transferred by the provisions of this Section shall have and exercise the same jurisdiction over the action as if it had been originally commenced before him. The Justice ordering the transfer of the action to another Justice, shall immediately transmit to the latter, on payment by the applicant of all Justices' and officers' costs unpaid and due from him, and the costs of making a copy of the docket for trans-

When action
to be
transferred.

Proviso.

mission, all the papers in the action, together with a certified transcript from his docket of the proceedings therein: *provided*, that if the applicant fail to pay said costs for the space of three hours, the Justice may vacate the order changing the place of trial, and proceed to try the cause as though such order had not been made. The Justice to whom the case is transferred, shall issue a notice stating the time and place when and where the trial will take place; which notice shall be served upon the parties by any officer authorized to serve process in a Justice's Court, or by any person specially appointed by the Justice for that purpose, at least one day before the trial.

Adjournment of trial.

SEC. 539. The trial may be adjourned by consent or upon application of either party, without the consent of the other, for a period not exceeding ten days, (except as provided in the next Section) as follows: First—The party asking the adjournment shall, if required by his adversary, prove, by his own oath or otherwise, that he cannot, for want of material testimony which he expects to procure, safely proceed to trial, and shall show in what respect the testimony expected is material, and that he has used due diligence to procure it, and has been unable to do so. Second—The party asking the adjournment shall also, if required by the adverse party, consent that the testimony of any witness of such adverse party, who is in attendance be then taken by deposition before the Justice, which shall accordingly be done, and the testimony so taken may be read on the trial, with the same effect and subject to the same objections as if the witness were produced. But such objections shall be made at the time of taking the deposition. Third—The Court may also require the moving party to state upon affidavit the evidence which he expects to obtain, and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed.

Same.

SEC. 540. An adjournment may be had either at the time of joining issue, or at any subsequent time to which the case may stand adjourned, on application of either party, for a period longer than ten days, but not to exceed four months from the time of the return day of the summons, upon proof, by the oath of the party or otherwise, to the satisfaction of the Justice, that such party cannot be ready for trial before the time to which he desires an adjournment for want of material evidence, particularly describing it, and that the delay has not been made necessary by any act of negligence on his part since the action was commenced; that he has used due diligence to procure the evidence, and has been unable to do so, and that he expects to procure the evidence at the time stated by him: *provided*, that if the adverse party admit that such evidence would be given, and consent that it may be considered as given on the trial, or offered and overruled as improper, the adjournment shall not be had.

SEC. 541. No adjournment shall be granted for a period

longer than ten days, upon the application of either party, except upon condition that such party file an undertaking, with sureties, to be approved by the Justice, to the effect that they will pay to the opposite party, the amount of any judgment that may be recovered against the party applying. Same.

SEC. 542. If the plaintiff fail to appear at the return day of the summons, the action shall be dismissed. If the defendant fail to appear at the return day of the summons, or if either party fail to attend at a day to which the trial has been adjourned, or fail to make the necessary pleading or proof on his part, the case may nevertheless proceed at the request of the adverse party, and judgment shall be given in conformity with the pleadings and proofs. When action may be dismissed.

SEC. 543. A trial by jury shall be demanded at the time of joining issue, and shall be deemed waived if neither party then demand it. When demanded, the trial of the case shall be adjourned until a time and place fixed for the return of the jury. If neither party desire an adjournment, the time and place shall be determined by the Justice, and shall be on the same day or within the next two days. The jury shall be summoned upon an order of the Justice, from the citizens of the precinct, and not from the bystanders. Trial by jury, when demanded.

SEC. 544. At the time appointed for the trial, the Justice shall proceed to call from the jurors summoned, the names of the persons to constitute the jury for the trial of the issue. The jury, by consent of the parties, may consist of any number not more than six nor less than three. Proceeding when jury trial demanded.

SEC. 545. If a sufficient number of competent and indifferent jurors do not attend, the Justice shall direct others to be summoned from the vicinity, and not from the bystanders, sufficient to complete the jury. Same.

SEC. 546. Either party may challenge the jurors. The challenges shall be either peremptory or for cause. Each party shall be entitled to three peremptory challenges. Either party may challenge for cause on any grounds set forth in Section One Hundred and Sixty-Three. Challenges for cause shall be tried by the Justice in a summary manner, who may examine the juror challenged and witnesses. Challenging Jurors.

CHAPTER 4.—JUDGMENT AND EXECUTION.

SEC. 547. Judgment that the action be dismissed without prejudice to a new action, may be entered, with costs, in the following cases: First—When the plaintiff voluntarily dismisses the action before it is finally submitted. Second—When he fails to appear at the time specified in the summons, or upon adjournment, or within one hour thereafter. Third—When it is objected at the trial, and appears by the evidence that the action is brought in the wrong county or precinct; but if the objection be taken and overruled, it shall be cause only of reversal on appeal, and shall not otherwise invalidate the Judgment of dismissal without prejudice in what case entered.

judgment; if not taken at the trial, it shall be deemed waived, and shall not be a cause of reversal.

Judgment
by default.

SEC. 548. When the defendant fails to appear and answer, judgment shall be given for the plaintiff, as follows: First—When a copy of the account, note, bill or other obligation upon which the action is brought, was filed with the Justice at the time the summons was issued, judgment shall be given without further evidence, for the sum specified in the summons. Second—In other cases the Justice shall hear the evidence of the plaintiff and render judgment for such sum only as shall appear by the evidence to be just, but in no case exceeding the amount specified in the summons.

Jury trial not
demanded.

SEC. 549. Upon issue joined, if a Jury trial be not demanded, the Justice shall hear the evidence and decide all questions of fact and of law, and render judgment accordingly.

Judgment,
how and when
entered, etc.

SEC. 550. Upon a verdict, the Justice shall immediately render judgment accordingly. When the trial is by the Justice, judgment shall be entered immediately after the close of the trial, if the defendant has been arrested and is still in custody; in other cases, it shall be entered within four days after the close of the trial. If the action be on contract against two or more defendants, and the summons is served on one or more, but not on all, the judgment shall be entered up only against those who were served or have voluntarily appeared, if the contract be a several, or a joint and several contract; but if the contract be a joint contract only, the judgment shall be entered up against all the defendants, but shall only be enforced against the joint property of all, and the individual property of the defendants served or who have voluntarily appeared in the action. In an action on a contract, or obligation for the direct payment of money, judgment for the plaintiff, whether the same be by default, or after verdict or decision of the Court, shall follow the contract or obligation.

When amount
exceeds
jurisdiction.

SEC. 551. When the amount found due to either party exceeds the sum for which the Justice is authorized to enter judgment, such party may remit the excess, and the judgment may be rendered for the residue.

When defend-
ant offers to
allow judg-
ment for
specified sum.

SEC. 552. If the defendant, at any time before the trial, offer in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued; but if he do not accept such offer before the trial, and fail to recover in the action a sum equal to the offer, he shall not recover costs, but costs shall be adjudged against him, and if he recover, be deducted from his recovery. But the offer, and failure to accept it, shall not be given in evidence to affect the recovery otherwise than as to costs as above provided.

Judgment
when defend-
ant is subject
to arrest.

SEC. 553. When a judgment is rendered in a case, where the defendant is subject to arrest and imprisonment thereon, it shall be so stated in the judgment and entered in the docket.

SEC. 554. When the prevailing party is entitled to costs

by this Chapter, the justice shall add their amount to the verdict, or in case of a failure of the plaintiff to recover, or in case of a dismissal of the action, shall enter up judgment in favor of defendant for the amount of such costs.

Costs to be included in judgment.

SEC. 555. The Justice, on demand of the party in whose favor judgment is rendered, shall give him a transcript thereof, which may be filed and docketed in the office of the Clerk of the Probate Court for the county where the judgment was rendered. The time of the receipt of the transcript by the Clerk shall be noted by him thereon, and entered in the docket, and from that time executions may be issued by the Clerk on such judgments, to the Sheriff of any other county of the Territory in the same manner as upon judgments recovered in the higher Courts. All process upon judgments recovered in Justices' Courts, to be executed within the same county, shall be issued by the Justice or his successors in office. No judgment rendered by a Justice of the Peace shall create any lien upon any lands of the defendant, unless a transcript of such judgment certified by the Justice, be filed and recorded in the office of the County Recorder. When such transcript is to be filed in any other county than that in which the Justice resides, such transcript shall be accompanied with the certificate of the County Clerk as to the official character of the Justice. When so filed, and recorded in the office of the Recorder for any county, such judgment shall constitute a lien upon, and bind the lands and tenements of the judgment debtor, situated in the county where such transcript may be filed and recorded in favor of such judgment creditor, as if such judgment had been rendered in the Probate Court for such county.

Transcript of judgment.

Process on judgment, how issued.

Lien.

SEC. 556. Execution for the enforcement of a judgment in a Justice's Court, may be issued on the application of the party entitled thereto, at any time within three years from the entry of judgment.

Execution may issue.

SEC. 557. The execution when issued by a Justice, shall be directed to the Sheriff, or to a constable of the county, and subscribed by the Justice by whom the judgment was rendered, or by his successor in office. It shall intelligibly refer to the judgment, by stating the names of the parties, and the name of the Justice before whom, and of the County and precinct where, and the time when it was rendered, the amount of judgment, if it be for money, and if less than the whole is due, the true amount due thereon. It shall contain, in like cases, similar directions to the Sheriff, or Constable, as are required by the provisions of Title Seven of this Act, in an execution to the Territorial Marshal, or Sheriff.

Form of execution.

SEC. 558. The Sheriff, or Constable, to whom the execution is directed shall proceed to execute the same in the same manner as the Territorial Marshal, or Sheriff, is required, by the provisions of Title Seven of this Act, to proceed upon executions directed to him; and the Constable, when the execution is directed to him, shall be vested for that purpose with all the powers of the Territorial Marshal, or Sheriff. And Sec-

How executed.

Sections, etc.,
applicable to
Justices'
Courts.

Proviso.

tions Two Hundred and Twelve, Two Hundred and Thirteen, and from Two Hundred and Fifteen to Two Hundred and Thirty-four, both inclusive, and Two Hundred and Thirty-Six, and Two Hundred and Thirty-Seven of Chapter One, said Title, and Chapter Two, of the same Title, are hereby made applicable to Justices' Courts and proceedings therein, the word "Justice" being inserted in lieu of the words "Judge" and "Clerk," whenever they occur, and a Constable to whom, and his successor in office, the writ is given, shall have all the powers and be subject to all the duties and liabilities therein given to or imposed upon the Territorial Marshal, or Sheriff: *provided*, that the words "in an amount not exceeding fifty dollars," in Section Two Hundred and Forty-One shall be deemed omitted.

CHAPTER 5.—GENERAL PROVISIONS.

Provisions
applicable
to Justices'
Courts.

Docket,
how kept.

SEC. 559. Those provisions of this Act which are referred to in this Title and no other, shall, in addition to the provisions embraced in this Title, be applicable to Justices' Courts and proceedings therein.

SEC. 560. Every Justice shall keep a book denominated a "docket," in which he shall enter: First—The title of every action or proceeding. Second—The object of the action or proceeding; and if a sum of money be claimed, the amount of the demand. Third—The date of the summons and the time of its return; and if an order to arrest the defendant be made, or a writ of attachment be issued, a statement of these facts. Fourth—The time when the parties, or either of them appear, or their non-appearance, if default be made; a minute of the pleadings and motions, if in writing, referring to them, if not in writing, a concise statement of the material parts of the pleading, and of all motions made during the trial by either party, and his decisions thereon. Fifth—Every adjournment, stating on whose application, whether on oath, evidence or consent, and to what time. Sixth—The demand for a trial by jury, when the same is made, and by whom made, the order for the jury, and the time appointed for the trial and the return of the jury. Seventh—The names of the jury who appear and are sworn, the names of all witnesses sworn, at whose request. Eighth—The verdict of the jury, and when received. If the jury disagree, and are discharged, the fact of such disagreement and discharge. Ninth—The judgment of the Court, specifying the costs included, and the time when rendered. Tenth—The issuing of the execution, when issued, and to whom; the renewals thereof, if any, and when made, and a statement of any money paid to the Justice, and when and by whom. Eleventh—The receipt of a notice of appeal, if any be given, and of the appeal bond, if any be filed, and of the making and delivery of a transcript of his judgment or docket.

Same; entries
to be evidence.

SEC. 561. The several particulars of the last Section specified, shall be entered under the title of the action to which

they relate, and at the time when they occur. Such entries in a Justice's docket, or a transcript thereof, certified by the Justice, or his successor in office, shall be primary evidence to prove the facts so stated therein.

SEC. 562. A Justice shall keep an alphabetical index to his docket, in which shall be entered the names of the parties to each judgment, with a reference to the page of entry. The names of the plaintiffs shall be entered in the index, in the alphabetical order of the first letter of the family names. Index to.

SEC. 563. It shall be the duty of every Justice, upon the expiration of his term of office, to deposit with his successor his official dockets, as well his own as those of his predecessors, which may be in his custody, to keep as public records. If the office of a Justice become vacant by his death, or removal from the precinct, or otherwise, before his successor is elected and qualified, the dockets in possession of such Justice shall be deposited with the County Clerk of the County, to be by him delivered to the successor in office of the Justice. To be deposited with successor.

SEC. 564. Any Justice with whom the docket of his predecessors is deposited, may issue execution or other process, upon a judgment there entered and unsatisfied, in the same manner and with the same effect as the Justice by whom the judgment was entered might have done. In case of the creation of a new County, or the change of the boundary between two Counties, any Justice into whose hands the docket of a Justice formerly acting as such within the same territory may come, shall for the purposes of this Section be considered the successor of said former Justice. Any Justice may issue executions.

SEC. 565. The Justice elected or appointed to fill a vacancy, shall be deemed the successor of the Justice whose office became vacant before the expiration of a full term. When the full term expires, the same or another person elected to take the office in the same precinct, from that time shall be deemed the successor. Who deemed successor.

SEC. 566. When two or more Justices are equally entitled, under the last Section, to be deemed the successors in office of a Justice, the Judge of the Probate Court for the County shall, by a certificate subscribed by him and filed in the office of the County Clerk, designate which Justice shall be the successor of a Justice going out of office, or whose office has become vacant. Same.

SEC. 567. The summons, execution, and every other paper made or issued by a Justice, except a subpoena, shall be filled up without a blank left to be filled by another, otherwise it shall be void. Papers, how filled up.

SEC. 568. In case of the sickness, or other disability, or necessary absence of a Justice on a return day of a summons, or at the time appointed for a trial, another Justice of the same County or an adjoining precinct of the County, may, at his request, attend in his behalf, and shall thereupon become vested with the power for the time being, of the Justice before whom the summons was returnable. In that case, the proper entry of the proceedings before the attending Justice, subscribed by Sickness of Justices, etc.

him, shall be made in the docket of the Justice before whom the summons was returnable. If the case be adjourned, the Justice, before whom the summons was returnable, may resume jurisdiction.

Special de-
putation to
serve papers.

SEC. 569. The Justice may, at the request of the party, and on being satisfied that it is expedient, specially depute any discreet person of suitable age, and not interested in the action, to serve a summons or execution with or without an order to arrest the defendant, or with or without a writ of attachment. The said Justice shall be liable on his official bond for all official acts of the person so deputed. Such deputation shall be in writing on the process.

Authority of
the deputation

SEC. 570. The person deputed shall have the authority of a constable in relation to the service, execution and return of such process, and shall be subject to the same obligations.

Constable to
complete
execution of
process.

SEC. 571. A constable, notwithstanding the expiration of his term of office, may proceed and complete the execution of all final process, which he has begun to execute, in the same manner as if he still continued in office, and his sureties shall be liable to the same extent.

Contempt,
what acts to
constitute.

SEC. 572. A Justice may punish as for contempt persons guilty of the following acts, and no other: First—Disorderly, contemptuous, or insolent behavior toward the Justice while holding the Court, tending to interrupt the due course of a trial or other judicial proceeding. Second—A breach of the the peace, boisterous conduct, or violent disturbance in the presence of the Justice or in the immediate vicinity of the Court held by him, tending to interrupt the due course of trial or other judicial proceedings. Third—Disobedience or resistance to the execution of a lawful order or process, made or issued by him. Fourth—Disobedience to a subpoena duly served, or refusing to be sworn or answer as a witness. Fifth—Rescuing any person or property in the custody of an officer by virtue of an order or process of the Court held by him.

When and
how punished.

SEC. 573. When a contempt is committed in the immediate view and presence of the Justice, it may be punished summarily, for which an order shall be made reciting the facts, as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed. When the contempt is not committed in the immediate view and presence of the Justice, a warrant of arrest may be issued by such Justice, on which the person so guilty may be arrested and brought before the Justice immediately, when an opportunity to be heard in his defense or excuse shall be given. The Justice may thereupon discharge him, or may convict him of the offense. A Justice may punish for contempts by fine or imprisonment, or both; such a fine not to exceed in any case fifty dollars, and such imprisonment one day.

Conviction,
how entered.

SEC. 574. The conviction, specifying particularly the offense and the judgment thereon, shall be entered by the Justice in his docket.

SEC. 575. Justices of the Peace may issue subpoenas in

any action or proceeding in the Courts held by them, and final process on any judgment recovered therein, to any part of the County. A Justice of the Peace may issue a summons to any person a resident of his precinct, to appear before him at his office to act as interpreter in any action or proceeding in his Court. Such summons shall be served and returned in like manner as a subpoena issued by a Justice. Any person so summoned shall, for a failure to attend at the time and place named in the summons, be deemed guilty of a contempt, and may be punished accordingly.

Subpoenas.

Summons.

SEC. 576. Justices of the Peace may issue commissions to take the depositions of witnesses out of this Territory, and settle interrogatories to be annexed thereto, and direct the manner in which the commissions shall be returned. The provisions of Title Eleven of this Act, so far as the same are consistent with the jurisdiction and powers of Justices' Courts, shall be applicable to Justices' Courts, and to actions and proceedings therein, the word "Justice" being deemed inserted in lieu of "Clerk" and "Judge" wherever the same occur.

Commissions to take depositions.

SEC. 577. A new trial may be granted by the Justice, on motion, within ten days after the entry of judgment, for any of the following causes: First—Accident or surprise, which ordinary prudence could not have guarded against. Second—Excessive damages, appearing to have been given under the influence of passion. Third—Insufficiency of the evidence to justify the verdict or other decision. Fourth—Newly discovered evidence material for the party making the application, which he could not with reasonable diligence have discovered and produced at the time.

New trial, for what causes granted.

SEC. 578. The application shall be made upon affidavit and notice. The affidavit shall be filed with the Justice, with a statement of the grounds upon which the party intends to rely. The adverse party may use counter affidavits on the motion, provided they be filed one day previous to the hearing of the motion.

Application.

SEC. 579. Any party dissatisfied with a judgment rendered in a Justice's Court, may appeal therefrom to the Probate Court for the County, any time within thirty days after the rendition of judgment: *provided*, that no appeal shall be taken for a sum less than twenty dollars. The appeal shall be taken by filing a notice thereof with the Justice, and serving a copy on the adverse party.

Appeal, how taken.

SEC. 580. All causes appealed to the Probate Court shall be tried anew in said Court, and said Court may regulate by rule the practice in such cases, in all respects not provided for by statute.

Cause to be tried anew.

SEC. 581. Upon receiving the notice of appeal, and on payment of the fees of the Justice, and filing an undertaking as required in the next Section, the Justice shall, within five days, transmit to the Clerk of the Probate Court a certified copy of his docket, the pleadings, all notices, motions and other papers filed in the cause, the notice of appeal and undertaking filed; and the Justice may be compelled by the Probate

Justice required to transmit copy of docket, etc.

Court, by an order entered upon motion, to transmit such papers, and may be fined for neglect or refusal to transmit the same. A certified copy of such order may be served on the Justice, by the party or his attorney. In the Probate Court, either party shall have the benefit of all legal objections made in the Justice's Court.

Appeal made
effectual by
filing under-
taking, etc.

SEC. 582. An appeal from a Justice's Court shall not be effectual for any purpose, unless an undertaking be filed, within five days after filing the notice of appeal, with two or more sureties, in the sum of one hundred dollars, for the payment of the costs on the appeal, or if a stay of proceedings be claimed, in a sum equal to twice the amount of the judgment, including costs, when the judgment is for the payment of money, or twice the value of the property, including costs, when the judgment is for the recovery of specific personal property, and shall be to the effect, when the action is for the recovery of money, that the appellant will pay the amount of the judgment appealed from, and all costs if the appeal be withdrawn or dismissed, or the amount of any judgment, and all costs that may be recovered against him in said action in the Probate Court. When the action is for the recovery of specific personal property, the undertaking shall be to the effect that the appellant will pay the judgment and costs appealed from, and obey the order of the Court made therein, if the appeal be withdrawn and dismissed, or will pay the amount of any judgment and costs which may be recovered against him in said action in the Probate Court, and will obey any order made by the Court therein. The undertaking shall be accompanied by the affidavits of the sureties that they are residents of the County, and are each worth the amount specified in the undertaking, over and above all their just debts and liabilities, exclusive of property exempt from execution. The adverse party may, however, except to the sufficiency of the sureties, within two days after the filing of the undertaking, and unless they and other sureties justify before the Justice from whose Court the appeal is taken, within two days thereafter, upon notice to the adverse party, the appeal shall be regarded as if no undertaking had been given. A deposit of the amount of the judgment appealed from, including all costs, or of the value of the property and all costs, in actions for the recovery of specific personal property, with the Justice, shall be equivalent to the filing of the undertaking in this Section mentioned; and in such cases the Justice shall transmit the money to the Clerk of the Court, to be by him paid out on the order of the Court.

Adverse
party may
except.

Staying of
proceedings.

SEC. 583. If an execution be issued on the filing of the undertaking, staying all proceedings, the Justice shall, by order, direct the officer to stay all proceedings on the same. Such officer shall, upon payment of his fees for services rendered on the execution, thereupon relinquish all property levied upon, and deliver the same to the judgment debtor, together with all moneys collected from sales or otherwise. If his fees be not paid, the officer may retain so much of the

property or proceeds thereof, as may be necessary to pay the same.

SEC. 584. Costs in the action shall be allowed to the prevailing party in a Justice's Court. The party in whose favor a judgment is rendered, and who claims his costs, shall file with the Justice, within two days after the verdict or decision of the Court, a memorandum of the items of his costs in the action or proceeding, which shall be verified as prescribed in Section Four Hundred and Eighty-Four. Costs.

SEC. 585. Justices of the Peace shall receive from the Sheriff, or constables of their county, all moneys collected on any process or order issued by their Courts respectively, and all moneys paid to them in their official capacity, and shall pay the same over to the parties entitled to receive them, without delay. For a violation of this section they may be removed from office, and shall be deemed guilty of a misdemeanor. Justices required to receive money and pay over.

SEC. 586. Justices of the Peace may, in all cases, require a deposit of money, or an undertaking, as security for costs of Court, before issuing a summons. Deposit of money, etc., for costs.

SEC. 587. The provisions of Chapter One, Title Ten, and Sections Four Hundred and Ninety-Three to Five Hundred and One, both inclusive, and Five Hundred and Four to Five Hundred and Six, both inclusive, Title Fifteen of this Act, and the miscellaneous provisions of Title Eighteen, shall be applicable to Justice's Courts and actions therein, the word "Justice" being deemed inserted in lieu of the word "Clerk," wherever it occurs. Provisions applicable to Justice's Courts.

TITLE XVII.

Miscellaneous Provisions.

SEC. 588. The Supreme Court may make rules not inconsistent with the Organic Act and laws of the Territory, for its own government and the government of the District Court; but such rules shall not be in force until thirty days after their adoption and publication. Rules of Court, how made.

SEC. 589. If an action be brought against a Territorial Marshal, or Sheriff, for an act done by virtue of his office, and he give written notice thereof to the sureties on any bond of indemnity received by him, the judgment recovered therein shall be conclusive evidence of his right to recover against such sureties, and the Court, or Judge in vacation may, on motion, upon notice of five days, order judgment to be entered up against them for the amount so recovered, including costs. Actions against Officers, etc.

SEC. 590. Words used in this Act in the present tense, shall be deemed to include the future as well as the present; words used in the singular number shall be deemed to include the plural, and the plural the singular; words used in one gender may include either; writing shall be deemed to include printing or printed paper; oath to include affirmation or declaration; signature or subscription to include mark when Terms explained.

the person cannot write, his name being written near it, and witnessed by a person who writes his own name as witness; the words "real estate" or "real property," to include mining claims; joint authority, given to three or more persons, is given to the majority, unless restricted. Whenever the word Territory is used, it shall be held to include and apply to the District of Columbia.

Sureties
required to
make affidavit

SEC. 591. In all cases where an undertaking with sureties is required by the provisions of this Act, the Judge, Justice, or Clerk, or other officer taking the same, shall, unless it is otherwise provided in said Act, require the sureties to accompany the same with an affidavit that they are each worth the sum specified in the undertaking, over and above all their just debts and liabilities, exclusive of property exempt from execution; *provided*, that when the amount specified in an undertaking exceeds three thousand dollars, and there are more than two sureties thereon, they may state in their affidavits that they are severally worth amounts less than that expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties.

Writs of
certiorari, etc.,
by whom
issued.

SEC. 592. Writs of *certiorari* and *mandamus* may be issued in the cases prescribed by this Act, by Judges of the Courts in term time or in vacation, and may, in the discretion of the Judge issuing the writ, be made returnable, and a hearing may be had on the return thereof in vacation.

Sale of
property
under writ of
attachment.

SEC. 593. Whenever property has been taken by an officer under a writ of attachment in pursuance of the provisions of this Act, and it shall be made to appear satisfactorily to the Court, or Judge thereof, that the interests of the parties to the action will be sustained by the sale thereof, the Court, or Judge, may order such property to be sold, in the same manner as property is sold under an execution, and the proceeds to be deposited in Court to abide the judgment in the action. Such order shall be made only upon notice to the adverse party, or his attorney, in case such party has been personally served with a summons in the action.

Certified
copies of
papers, etc., to
be evidence.

SEC. 594. A copy of any record, document or paper in the custody of a public officer of this Territory, or of the United States, within this Territory, certified under the official seal, or verified by the oath of such officer, to be a true, full and correct copy of the original in his custody, may be read in evidence in any action or proceeding in the Courts of this Territory, in like manner, and with the like effect, as the original could be if produced.

Copartners,
when sum-
moned in
common
name.

SEC. 595. When two or more persons, associate in any business, transact such business under a common name whether it comprises the names of such persons or not, the associates may be sued by such common name, the summons in such cases being served on one or more of the associates, but the judgment in such cases shall bind only the joint property of the associates.

Substitution
of real party
defendant.

SEC. 596. A defendant against whom an action is pending upon a contract, or for specific personal property,

may at any time before answer, upon affidavit that a person, not a party to the action, makes upon him, and without any collusion with him, a demand upon the same contract, or for the same property, upon due notice to such person, and the adverse party, apply to the Court for an order to substitute such person in his place and discharge him from liability to either party, on his depositing in Court the amount claimed on the contract, or delivering the property, or its value, to such person as the Court may direct, and the Court may, in its discretion, make the order.

SEC. 597. Any person shall be entitled to intervene in an action who has an interest in the matter in litigation, in the success of either of the parties to the action, or an interest against both. An intervention takes place when a third person is permitted to become a party to an action between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and the defendant. Intervention,
when allowed.

SEC. 598. A third person may intervene either before or after issue has been joined in the cause. Who may
intervene.

SEC. 599. The intervention shall be by petition or complaint filed in the Court in which the action is pending; and it must set forth the grounds on which the intervention rests. A copy of the petition or complaint shall be served upon the party or parties to the action, against whom anything is demanded, who shall answer it as if it were an original complaint in the action. How and what
to set forth.

SEC. 600. The Court shall determine upon the intervention at the same time that the action is decided; if the claim of the party intervening is not sustained, he shall pay all costs incurred by the intervention. Court to
determine.

SEC. 601. No action to obtain a discovery under oath, in aid of the prosecution or defense of another action or proceeding, shall be allowed. Action to
obtain dis-
covery, etc.,
allowed.

SEC. 602. In all cases, not otherwise provided for in this Act, where sureties are required to justify, they shall appear before the officer or person authorized to take the justification, and may be examined under oath by such officer or person, and the adverse party touching their qualifications as sureties, which examination shall be reduced to writing and subscribed by the sureties if required. If, upon such examination, it shall appear to such officer or person that said sureties, or either of them, have the necessary qualifications of such, he shall so indorse upon the statement, and cause the same to be filed, and thereupon the justification shall be complete. Sureties may
be examined
under oath.

SEC. 603. The repeal of a law does not revive one previously repealed by it, nor affect any rights, duties, or penalties which have arisen under it. Repeal of law.

SEC. 604. Laws and parts thereof, and words and phrases, shall be construed in accordance with the customary usage of the languages. How con-
strued.

SEC. 605. "An Act in Relation to Abatement in Civil

Acts repealed.

Actions, approved January sixteenth, eighteen hundred and sixty-one," "An Act Containing Provisions Applicable to the Laws of the Territory of Utah, approved January fourteenth, eighteen hundred and fifty-four;" "An act Supplementary to the Act Regulating the Mode of Procedure in Civil Cases in the Courts of the Territory of Utah," approved December thirtieth, eighteen hundred and fifty-two, approved February nineteenth, eighteen hundred and sixty-nine; are hereby repealed; and so much of "An Act Providing for Appeals to the Supreme Court," approved January eighteenth, eighteen hundred and sixty-one, and "An Act Governing Writs of Attachments and Garnishments," approved January twentieth, eighteen hundred and sixty-five; and "An Act Regulating the Mode of Procedure in Civil Cases in the Courts of the Territory of Utah," approved December thirtieth, eighteen hundred and fifty-two; and "An Act Declaring Certain Things to be property Specifying the Owner Thereof, Defining the Mode of Recovering its Possession, and Providing for Redress of any Grievance that may arise from Proceedings under this Act," approved January twentieth, eighteen hundred and sixty; and "An Act authorizing the Issuing of Executions against Judgment Debtors, Non-Residents of the County," approved January nineteenth, eighteen hundred and sixty-four; and "An Act in Relation to the Judiciary," approved January nineteenth, eighteen hundred and fifty-five; and "An Act in Relation to Justices of the Peace," approved February fourth, eighteen hundred and fifty-two; "An Act Authorizing the Governor to Appoint Commissioners to take Acknowledgement of Deeds or other Contracts, and Affidavits and Depositions in the States and other Territories of the United States;" approved February eighteenth, eighteen hundred and sixty-eight, as conflict with the provisions of this Act, are hereby repealed.

—o—

AN ACT

Amending "An Act Amendatory of and Supplementary to the Charter of St. George City," Approved February 21, 1868.

[Approved February 18, 1870.]

Amendments

Be it enacted by the Governor and Legislative Assembly of the Territory of Utah: That the second Section of "an Act amendatory of and supplementary to the Charter of St. George City," Approved February Twenty-First, Eighteen Hundred and Sixty-Eight, be amended by adding to said Section the words following, to wit: *provided*, that owners of city lots, drawing water from the public sects for irrigating the same may for each and every lot so irrigating, be taxed not exceeding the amount specified in this Section, to be used in

making, cleaning and repairing sects, and street crossings or otherwise supplying the city with water, but owners so taxed shall not be liable to the tax first authorized in this Section.

—o—

AN ACT

Providing for the Removal or Burial of Dead Animals.

[Approved February 18, 1870.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all horses, cattle, mules and sheep or other animals, which shall have died within the limits of any town, or settlement or near any main traveled Territorial or County road of this Territory, shall be removed, or buried within two days from the death of said animals by the owner thereof, or the person having it in charge at the time of its death, but if such person cannot be found, then at the expense of the county in which the said town, settlement or roads are situate. If within the incorporated limits of a city then at the expense of said city.

At whose expense offensive dead animals may be removed or buried.

SEC. 2. When any animal is left unburied it shall be taken one half mile from any town or settlement and one quarter of a mile from any main traveled Territorial or County road, and twenty rods from any spring, running stream or water ditch, and it shall be the duty of all Sheriffs, Constables and city Marshals of this Territory to see that the provisions of this Act are carried into effect: *provided*, that any citizen may bury or remove such animals and collect pay therefor from the owner if known, or from the County when the owner is not known.

Directions with regard to removal.

SEC. 3. Any person refusing or neglecting to comply with the requirements of this Act shall upon conviction thereof, before any acting Justice of the Peace, be fined in a sum not exceeding Ten Dollars, the expense of removing or burying said animal and cost of suit.

Penalty.

—o—

AN ACT

Amending "An Act Providing for a Poll Tax for Road Purposes," Approved January 16th, 1862.

[Approved February 18th, 1870.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That Section One of "An Act

Amendments.

Providing for a Poll Tax for Road Purposes," approved January sixteen, eighteen hundred and sixty-two, be amended, by inserting after the word "and" in the fourth line, "shall annually," and after the word "district" in the fifth line, "whose term of office shall be for one year, or until his successor is appointed and qualified," and in line seven after the word "under" substitute for the word "Fifty," "Sixty."

—o—

AN ACT

To amend "An Act defining who are exempt from serving on Juries, and prescribing the mode of procuring Grand and Petit Jurors, and Juries for District Courts, and for other purposes," approved January 21, 1859.

[Approved February 18, 1870.]

Repeal.

Judge may apportion jurors.

Clerk to issue venire, when.

Duty of Marshal or Sheriff.

Tickets drawn by lot.

List to be furnished and signed by Clerk.

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That Sections Five, Six and Ten of the Act defining who are exempt from serving on juries and prescribing the mode of procuring Grand and Petit Jurors, and juries for District Courts and for other purposes, approved January twenty-first, eighteen hundred and fifty-nine, be and the same hereby are repealed, and in lieu thereof the following be enacted: When a District Court is to be held for a District and the Judge thereof is reliably advised that the ends of justice will be materially promoted by so doing, he may apportion the jurors, both Grand and Petit, between two or more Counties of his District.

SEC. 2. When a District Court is to be held, whether for a District or for a County, the Clerk of said Court shall, at least thirty days previous to the time of holding said Court, issue a writ to the Territorial Marshal, if said Court is to be holden for a District, or to the Sheriff of the County in which said Court is to be held, if said Court is to be held for a County, specifying the time and place of holding said Court, requiring him to summon eighteen eligible men to serve as Grand Jurors, and eighteen eligible men to serve as Petit Jurors.

SEC. 3. Upon the reception of said writ, the Territorial Marshal, or Sheriff, as the case may be, shall proceed to the office of the Clerk of the County Court of the County from which jurors are to be summoned, and the said Clerk shall, in the presence of the officer, thoroughly shake the tickets previously deposited in a box or other safe place of deposit, and draw therefrom promiscuously, the number of jurors required to be summoned from such County for Grand Jurors and for Petit Jurors, keeping separate lists, and those drawn for Grand Jurors shall be summoned for Grand Jurors, and those drawn

for Petit Jurors shall be summoned for Petit Jurors, which lists shall be signed by the Clerk and officer having said writs, and filed in the office of said Clerk.

SEC. 4. The Court shall impanel out of the list summoned as Grand Jurors, fifteen eligible men to serve as a Grand Jury: *provided*, if from any cause, there shall not be in attendance upon the Court of those summoned for a Grand Jury enough to make the number of fifteen, the Court may order the pannel to be made up of those summoned for Petit Jurors or from eligible talesmen summoned from the body of the County or District, as the case may be, and not from the bystanders.

Number of jurors required and manner of completing the pannel.

—o—

AN ACT

Extending the Boundaries of Juab County.

[Approved February 18, 1870.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the North, West, and Southern boundaries of Juab County shall be as follows, viz: North by Utah County, following the main divide, passing through the highest peak of mountains between Tintic and Rush Valleys to the divide, between Cherry and Faust Creeks, thence due west to the State of Nevada, west by the State of Nevada, and south by Millard County.

Boundary.

SEC. 2. All laws and parts of laws conflicting with this Act are hereby repealed.

Repealing clause.

—o—

AN ACT

To provide for the election of Fence Viewers and prescribing their Duties.

[Approved February 18, 1870.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That at the general election to be holden on the first Monday in August next, and every two years thereafter, two Fence Viewers shall be elected in each precinct, whose term of office shall be for two years, and until their successors are elected and qualified.

When elected and for what term.

SEC. 2. The duties of the said Fence Viewers shall be to determine upon a lawful fence, within the meaning of Section

Duties.

Fees.

Four of "An Act pertaining to damage done by animals, and defining a lawful fence," approved February seventeen, eighteen hundred and sixty-nine, and they shall examine and give judgment upon any fence within their respective precincts, when required so to do: *provided*, that they shall receive the sum of twenty-five cents each per hour for service rendered as aforesaid, to be assessed by the said Fence Viewers upon the parties in whose interest said service shall have been performed.

—o—

AN ACT

Changing the Corporate Limits of Mount Pleasant and Moroni, in Sanpete County.

[Approved February 18, 1870.]

Boundaries.

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the northeast corner of Moroni City Corporation be extended one and one fourth miles east from its present location, thence due south until it intersects the boundary line of Spring City Corporation, thence diagonally along said Spring City Corporate line to the southeast corner of the former boundary of Moroni; and the west line of Mount Pleasant Incorporation is hereby to the east, so as to conform to the extended boundary of Moroni as specified in this Act.

—o—

AN ACT

Incorporating Corinne City.

[Approved February 18, 1870.]

Boundary.

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that district of county embraced in the following boundaries in Box Elder County, to wit: Beginning at the southwest corner of section one, United States survey, township nine north, range three west, thence north two miles to northwest corner of section thirty-six, township ten north, range three west, thence east to the center of main channel of Bear River, thence down the main channel of the said Bear River to the line between sections six and seven, township nine north, range two west, thence west to place of beginning, shall be known and designated under the name and style of Corinne City; and the inhabitants

Name and style.

thereof are hereby constituted a body corporate and politic, by the name aforesaid, and shall have succession; and may have and use a common seal, which they may change and alter at pleasure. Seal.

SEC. 2. The inhabitants of said city by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity and in all actions whatsoever; to purchase, receive and hold property, real and personal, in said city; to purchase, receive and hold real property beyond the city for burying grounds or other public purposes for the use of the inhabitants of said city; to sell, lease, convey or dispose of property, real and personal, for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto as natural persons. Powers.

SEC. 3. There shall be a Mayor and ten Councilors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof; and five of the Councilors chosen at the first election shall hold office for one year, and five of them for two years, and until their successors are elected and qualified; the terms of office of the Councilors elected at the first election shall be determined by lot at the first meeting of the Council. After the first election five Councilors shall be elected annually. The City Council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business; but a smaller number may adjourn from day to day and compel the attendance of absent members under such penalties as may be prescribed by ordinance; there shall also be elected in like manner two Justices of the Peace, who shall have the qualifications of voters, be commissioned by the Governor, and have jurisdiction in all cases arising under the ordinances of the city. City Council.

SEC. 4. The Mayor and Councilors, before entering upon the duties of their offices, shall take and subscribe an oath or affirmation that they will support the Constitution of the United States and the laws of this Territory, and that they will well and truly perform all the duties of their offices to the best of their skill and abilities. Oath.

SEC. 5. A Mayor shall be elected biennially, and shall hold office for two years, and until his successor is elected and qualified; and the first election under this Act shall be at such time and place in said city as the Probate Judge of Box Elder County shall direct: *provided*, said election shall be on or before the first Monday in April next. Said election shall be held and conducted as now is provided by law for the holding of elections for County and Territorial officers; and at the said first election all citizens of the United States, who have resided for six months last past within said city limits, shall be deemed electors and entitled to vote at said first election. Election.
How conducted.

SEC. 6. The clerks of election shall leave with each person elected, or at his usual place of residence, within five days

Notifications. after the election, a written notice of his election; and each person so notified shall, within ten days after the election, take the oath or affirmation hereinbefore mentioned, a certificate of which oath shall be deposited with the Recorder, whose appointment is hereinafter provided for, and be by him preserved; and all subsequent elections shall be held, conducted and returns thereof made, as may be provided for by ordinance of the City Council.

Taxes. SEC. 7. The City Council shall have authority to levy and collect taxes for city purposes upon all taxable property, real and personal, within the limits of the city, not exceeding one half of one per cent. per annum, upon the assessed value thereof; and may enforce the payment of the same, to be provided for by ordinance not repugnant to the Constitution of the United States or to the laws of this Territory.

City Officers. SEC. 8. The City Council shall have power to appoint a Recorder, Treasurer, Assessor and Collector, Marshal and Supervisor of Streets, and all such other officers, by ordinance, as may be necessary, define the duties of all city officers and remove them from office at pleasure.

Bonds. SEC. 9. The City Council shall have power to require of all officers appointed in pursuance of this Act, bonds with security for the faithful performance of their respective duties, and also to require of all officers appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices.

Ordinances. SEC. 10. The City Council shall have power and authority to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the laws of this Territory, as they may deem necessary for the peace, benefit, good order, regulation, convenience, and cleanliness of said city; for the protection of property therein from destruction by fire or otherwise, and for the health and happiness of the inhabitants thereof; and shall have control of the water and water courses leading to the city; *provided*, that such control shall not be exercised to the injury of any rights already acquired by actual settlers thereon, and shall have control of the water and mill privileges within said city; but in no case shall they interfere with the natural rights of others heretofore acquired in relation to water. Vacancies in the City Council shall be filled by special elections, held after public notice of at least ten days. The City Council shall have power to divide the city into wards and specify the boundaries thereof. and to fix and establish the fees of the officers of said Corporation.

Vacancies. SEC. 11. All ordinances passed by the City Council shall, within ten days after they shall have been passed, be published in some newspaper printed in said city, or certified copies thereof be posted up in three of the most public places in the city. They shall not be in force until thus published or posted up.

Publication. SEC. 12. All ordinances of the city may be proven by the seal of the Corporation affixed thereto; and, when printed

Proof.

or published in book or pamphlet form, purporting to be printed or published by the authority of the Corporation, the same shall be received in evidence in all courts and places without further proof.

SEC. 13. The Justices of the Peace of said city shall have all the powers of other Justices of the Peace, both in civil and criminal cases, arising under the laws of the Territory. They shall perform the same duties, be governed by the same laws and give the same bonds and securities as other Justices of the Peace. They shall have exclusive original jurisdiction in all cases arising under the ordinances of the Corporation, and shall issue such process as may be necessary to carry such ordinances into execution. Appeals may be had from any decision or judgment of said Justices arising under the ordinances of said city, or the laws of the Territory, to the Probate Court of said Box Elder County; in the same manner as appeals are or may be taken from other Justices of the Peace.

Justices of the Peace.

Jurisdiction.

Appeals.

SEC. 14. The Mayor shall be the Chief Executive Officer of said Corporation; he shall preside in the City Council, and shall have power to veto any ordinance when not passed by four-fifths majority, and it shall be his duty to sign all city ordinances.

Power and duty of Mayor.

SEC. 15. The City Council shall have power to restrain, regulate or prohibit the running at large of cattle, horses, mules; sheep, swine, goats, and all kinds of poultry in said city; and to tax and regulate the keeping of dogs, and to authorize the destruction of the same, when at large contrary to city ordinance.

General powers.

SEC. 16. To license, regulate, prohibit or restrain the manufacturing, selling or giving away of spirituous, vinous or fermented liquors; to tax and regulate tavern keepers, dram or tipping-shop keepers, victualing or coffee houses, restaurants, saloons, or other houses or places for the selling or giving away of ardent, vinous or fermented liquors.

To license, &c.

SEC. 17. The City Council shall have exclusive power, by ordinance, to regulate the police of the city; to provide for the punishment of offenders and vagrants by imprisonment in the city jail, or by compelling them to labor on the streets or other public works, until the same shall be fully paid in all cases where such offenders or vagrants shall fail or refuse to pay the fines or forfeitures which may be awarded against them; to license, tax and regulate auctioneers, merchants and retailers; to license, regulate and tax theatrical and other exhibitions, shows and amusements; to restrain, prohibit and suppress gambling, gaming, bawdy and other disorderly houses.

Exclusive power by Ordinance.

SEC. 18. This Act shall be in force from and after its passage, and may be amended at the pleasure of the Legislative Assembly.

AN ACT

To Provide for Printing and Distributing the Laws and Journals of the Nineteenth Annual Session of the Legislative Assembly of the Territory of Utah.

[Approved February 18, 1870.]

Publication. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the Public Printer is hereby authorized and required to print and publish in book form, three thousand copies of the Acts, Resolutions and Memorials passed and adopted at the Nineteenth Annual Session of the Legislative Assembly, with full marginal notes, and that five hundred copies be bound together with the Acts of the last three Sessions, and the revised Statutes; also one thousand copies, with the Acts of the last three Sessions, and that the whole be properly indexed, and two thousand copies of said index, one to be included in each bound book herein authorized, and the balance distributed in connection with the remaining Acts of this Session. Also five hundred copies of the Journals, Nineteenth Annual Session, in pamphlet form, including the Governor's Message, and reports of the Treasurer, Auditor, Superintendent of Schools, and Directors of the Penitentiary, and reports of the Directors of the Agricultural Society, and the reports of the Chancellor of Deseret University, together with such other documents as have been ordered placed on the Journals, and the Secretary of the Territory is hereby required to distribute the same in the manner prescribed in "An Act to Provide for the Printing of the Laws and Journals, approved January nineteenth, eighteen hundred and sixty-six."

Distribution.

—o—

AN ACT

Amending "An Act Concerning Certain Animals Running at Large, approved January twenty-first, eighteen hundred and fifty-three."

[Approved February 18, 1870.]

Amendment. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That Section Four of An Act entitled "An Act Concerning Certain Animals Running at Large," approved January twenty-first, eighteen hundred and fifty-three, is hereby made applicable to all other kinds of live stock as well as sheep.

AN ACT

For Convening the Legislative Assembly of the Territory of Utah, at its Twentieth and subsequent Sessions.

[Approved February 18, 1870.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the Twentieth Session of the Legislative Assembly of the Territory of Utah, shall begin and be held in the City Hall, Salt Lake City, at two p.m., on the second Monday in January, eighteen hundred and seventy-two, and every two years thereafter; *provided* that if Congress shall at its present Session authorize annual Sessions, then the Twentieth Session shall begin and be held in the City Hall, Salt Lake City, on the second Monday in January, eighteen hundred and seventy-one, at two p.m; and subsequent Sessions shall commence annually thereafter on the second Monday in January, at two p.m. Proviso.

SEC. 2. An Act, entitled "An Act to Provide for Convening the Eighteenth and subsequent Annual Sessions of the Legislative Assembly," approved February twenty-first, eighteen hundred and sixty-eight is hereby repealed. Repeal.

—o—

AN ACT

Incorporating Washington City in Washington County.

[Approved February 18, 1870.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that district of country embraced in the following boundaries in Washington County, to wit: beginning at the north-east corner of the City of St. George, thence east four miles, thence south five miles, thence west four miles, thence north along the east boundary of St. George, to the place of beginning shall be known and designated under the name and style of Washington City, and the inhabitants thereof are hereby constituted a body corporate and politic, by the name aforesaid, and may have and use a common seal, which they may change and alter at pleasure. Boundary.

SEC. 2. The inhabitants of said city by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity, and in all actions whatsoever; to purchase, Powers.

receive and hold property, real and personal in said city; to purchase, receive and hold real property beyond the city for burying grounds or for other public purposes for the use of the inhabitants of said city; to sell, lease, convey or dispose of property, real and personal for the benefit of said city; to improve and protect such property, and to do all other things in relation thereto as natural persons.

City Council. SEC. 3. There shall be a City Council, to consist of a Mayor and six Councilors, who shall have the qualifications of Electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years and until their successors shall be elected and qualified. The City Council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business; but a smaller number may adjourn from day to day, and compel the attendance of absent members under such penalties as may be prescribed by ordinance; there shall also be elected in like manner, two Justices of the Peace, who shall have the qualifications of voters, be commissioned by the Governor, and have jurisdiction in all cases arising under the ordinances of the city.

Oath. SEC. 4. The Mayor and Councilors before entering upon the duties of their offices, shall take and subscribe an oath or affirmation that they will support the Constitution of the United States, and the Laws of this Territory, and that they will well and truly perform all the duties of their offices to the best of their abilities.

Election. SEC. 5. A Mayor and six Councilors shall be elected biennially, and the first election under this Act shall be at such time in said city, as the Probate Judge of Washington County shall direct: *provided*, said election shall be on or before the first Monday in August, next. Said election shall be held and conducted as now is provided by law for the holding of elections for County and Territorial Officers; and at the said first election, all electors within said city limits shall be entitled to vote.

How conducted. SEC. 6. The Clerks of election shall leave with each person elected, or at his usual place of residence, within five days after the election, a written notice of his election, and each person so notified, shall, within ten days after the election, take the oath or affirmation hereinbefore mentioned, a certificate of which oath shall be deposited with the Recorder, whose appointment is hereinafter provided for, and be by him preserved; and all subsequent elections shall be held, conducted, and returns thereof made as may be provided for by ordinance of the City Council. In case a majority of the members elect shall refuse or neglect to qualify within the specified time, the Probate Judge shall order another election to fill such vacancies.

Notifications. SEC. 7. The City Council shall have authority to levy and collect taxes for city purposes upon all taxable property, real and personal, within the limits of the city, not exceeding one half of one per cent. per annum upon the assessed value

Taxes.

thereof, and may enforce the payment of the same in any manner, to be provided by ordinance, not repugnant to the Constitution of the United States, or the Laws of this Territory, and shall also be authorized to assess and collect a poll tax of one day's work, or in lieu thereof, two dollars in cash for each able-bodied man between the ages of eighteen and sixty years, to be applied upon the streets and water sets of said city.

SEC. 8. The City Council shall have power to appoint a Recorder, Treasurer, Assessor and Collector, Marshal and Supervisor of Streets. They shall also have power to appoint all such other officers, by ordinance, as may be necessary; define the duties of all City Officers, and remove them from office at pleasure. City Officers.

SEC. 9. The City Council shall have power to require of all officers appointed in pursuance of this Act, bonds with security, for the faithful performance of their respective duties; and also to require of all other officers appointed as aforesaid, to take an oath for the faithful performance of the duties of their respective offices. Bond.

SEC. 10. The City Council shall have power and authority, to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or the Laws of this Territory, as they may deem necessary for the peace, benefit, good order, regulation, and cleanliness of said city, for the protection of property therein from destruction by fire or otherwise, and for the health and happiness of the inhabitants thereof; and shall have control of the water and water courses leading to the city: *provided*, that such control shall not be exercised to the injury of any rights already acquired by actual settlers thereon; and shall have control of the water courses and mill privileges within said city, but in no case shall they interfere with the natural rights of others heretofore acquired in relation to water. They shall have power to fill all vacancies that may happen by death, resignation, removal or otherwise of any of the officers herein made elective; to fix and establish the fees of the officers of said Corporation. The City Council shall have power to divide the city into wards, and specify the boundaries thereof. Ordinances.

SEC. 11. All ordinances passed by the City Council, shall, within ten days after they shall have been passed, be published in some newspaper printed in said city, or certified copies thereof posted in three of the most public places in the city. They shall not be in force until thus posted or published. Vacancies.

SEC. 12. All ordinances of the city may be proven by the Seal of the Corporation, and when printed or published in book or pamphlet form, purporting to be printed or published by the authority of the Corporation, the same shall be received in evidence in all courts and places without further proof. Publication.

SEC. 13. The Justices of the Peace of said city shall have all the powers of other Justices of the Peace, both in civil and criminal cases arising under the Laws of the Territory. They shall perform the same duties, be governed by the same laws, give the same bonds and securities as other Justices of the Proof.

Justices of the Peace.

Peace. They shall have exclusive original jurisdiction in all cases arising under the city ordinances, and shall issue such process as shall be necessary to carry such ordinances into execution. Appeals may be had from any decision or Judgment of said Justices arising under the ordinances of said city, or the Laws of the Territory to the Probate Court of said Washington County, in the same manner as appeals are or may be taken from other Justices of the Peace.

Jurisdiction
Appeals.
Power and duty of Mayor

SEC. 14. The Mayor shall be the Chief Executive Officer of said Corporation. He shall preside in the City Council, and shall have power to veto any ordinance when not passed by two-thirds majority, and it shall be his duty to sign all City Ordinances.

General powers.

SEC. 15. The City Council shall have power to restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats, and all kinds of poultry; and to tax and regulate the keeping of dogs, and to authorize the destruction of the same when at large contrary to city ordinances.

To license, &c.

SEC. 16. To license, regulate, prohibit or restrain the manufacturing, selling or giving away of spirituous, vinous or fermented liquors, tavern keepers, dram-shop keepers, victualing or coffee houses, restaurants, saloons, or other houses or places for the selling or giving away of ardent, vinous or fermented liquors.

Exclusive power by ordinance.

SEC. 17. The City Council shall have exclusive power by ordinance to regulate the police of the city, to license, tax and regulate auctioneers, shows and amusements; to prohibit and suppress gaming, bawdy and other disorderly houses.

SEC. 18. This Act shall be in force on and after the tenth day of April, one thousand eight hundred and seventy, and may be amended or repealed at the pleasure of the Legislative Assembly.

—o—

AN ACT

Providing for Incorporating Associations, for Mining, Manufacturing, Commercial and other Industrial Pursuits.

[Approved February 18, 1870.]

SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That hereafter whenever any number of persons not less than six, two-thirds of whom being residents of this Territory, are desirous of associating themselves together for establishing and conducting any mining, manufacturing, commercial or other industrial pursuit in this Territory, and who wish to incorporate for that purpose,

Who may become a body corporate.

may, by complying with the provisions of this Act, become a body corporate.

HOW TO PROCEED TO BE INCORPORATED.

SEC. 2. They shall enter into an agreement in writing, signed by each of them, and by at least four of their number acknowledged before the Probate Judge of the County in which they have established or intend to establish their principal place of business, stating the precinct or city, and stating the name of the association, their names and places of residence written in full, the time of its duration, which shall not in any case be less than three years nor more than twenty-five years, the pursuit or business agreed upon, specifying it in general terms, the place of its general business, the amount of stock each party has subscribed, the amount of each share and the limit of capital stock agreed upon, the number and kind of officers for the association, with their qualifications and term of office and the time and manner of their election, removal and resignation, and whether the private property of the stockholders shall be liable for its obligations or not, with such additional clauses as they deem necessary for the conducting of the business and its future safety and welfare. To this there shall be added the oath or affirmation of four or more of their number, to the effect that they have commenced or it is *bona fide* their intent to commence and carry on the business mentioned in the agreement, and that the affiants verily believe that each party to the agreement has paid, or is able to and will pay the amount of his stock subscribed, provided that said acknowledgement shall not be made before the Probate Judge until twenty-five per cent. of the stock subscribed by each shareholder shall have been paid in.

Must enter into an agreement and what it must contain.

SEC. 3. The agreement, with the oath or affirmation, shall, within ten days from its due execution, be deposited with the Probate Clerk of the county in which the general business is to be carried on, and shall be by him recorded in a book to be prepared for that purpose and kept in his office, the expenses of which recording shall be paid by the association.

The agreement must be acknowledged.

SEC. 4. Before the first or any other officers shall enter upon the duties of their respective offices, they shall take and subscribe an oath of office, and enter into bonds to the acceptance of the Probate Judge, that they will discharge the duties of such office to the best of their judgment, and that they will not do nor consent to the doing of any matter or thing relating to the business of the association with intent to defraud any stockholder or creditor or the public. And the oath or affirmation and bonds shall be filed in said office and recorded.

How officers to qualify.

SEC. 5. So soon as the agreement and oath or affirmation and oath of office and bonds are filed and recorded, the clerk of the Probate Court shall, under the direction of the Probate Judge, issue under the seal of the Court, a certificate to the association, therein stating in general terms the facts, that the agreement and oath or affirmation and oath of office and bonds

Judge of Probate to issue a certificate.

have been filed in his office, which shall be sufficient to constitute the association a body corporate, with succession as specified in the agreement.

POWERS OF THE CORPORATION.

Powers of the corporation.

SEC. 6. The corporation in its name shall have power to make contracts, to sue and to be sued to have a seal, which it may alter at pleasure, to buy, use, and sell or dispose of personal property, to buy, use, sell or dispose of all such real estate as shall be necessary for its general business and such as shall be necessary for the collection of its debts or judgments or decrees in its favor; but it shall not have power to enter into, as a business, the buying and selling of real estate. It may make all such by-laws, rules and regulations, not inconsistent with the laws in force, or which may be in force in this Territory, and not inconsistent with other corporate rights and vested privileges, as may be necessary to carry into effect the object of the association; and such by-laws, rules and regulations may be made in a general meeting of the stock-holders or by a board of officers elected by them. It may as hereinafter provided increase its capital stock or dissolve the corporation.

HOW THE CAPITAL STOCK MAY BE INCREASED.

Capital may be increased.

SEC. 7. If more capital than is first subscribed be needed, the stockholders may, at any meeting called for that purpose, by a two-thirds vote of all the stockholders, increase the same by the sale of more shares, and thereafter the stock may be increased accordingly; but in no case shall the capital stock exceed the sum of two millions of dollars. The stock subscribed under this Section shall be taken by persons, two-thirds of whom shall be residents of the Territory.

HOW THE CORPORATION MAY DISSOLVE ITSELF.

Corporation may be dissolved.

SEC. 8. Any corporation formed under this Act, may dissolve and disincorporate itself by its officers presenting to the Probate Judge of the county in which the principal office of the company is located, a statement setting forth that at a meeting of the stockholders called for that purpose, it was decided by a two-thirds vote of all the stockholders to disincorporate and dissolve the incorporation. Notice of the application shall then be given by the Clerk, which notice shall set forth the nature of the application and shall specify the time and place at which it is to be heard, and shall be published in some newspaper having general circulation in the Territory, once a week for one month. At the time or place appointed, or at any other time or place to which it may be postponed by the Judge, said Judge shall proceed to consider the application, and if satisfied that the corporation has taken the necessary vote to dissolve itself, and that all claims against the corporation are discharged, he shall enter an order declaring it dissolved.

MISCELLANEOUS PROVISIONS.

SEC. 9. Whenever the corporation shall be dissolved, if there shall be debts or claims due to it, or debts or obligations against it, or assets, real or personal, not converted into money for distribution, the corporate powers shall be continued for the purpose of collecting the debts or claims due, and paying its debts or obligations and selling and converting its assets into money and distributing the same among the stockholders; and if no sufficient means of effecting the object and intent of this Section be provided in the agreement or by-laws, the Court shall have power on the application of any person interested, to make all needful rules and orders and judgments necessary to carry the provisions of this Section into effect.

If corporation
be dissolved
its affairs may
be adjusted.

SEC. 10. The corporation shall collect of the stockholders the amount of stock by them subscribed, in such installments and at such times as shall be settled by the agreement or by-laws. It shall have a lien on the amount paid in and the dividends thereon for any balance due for the stock of a delinquent stockholder.

Corporation
has lien.

SEC. 11. The officers, after being fully qualified to act, may continue to act, unless removed for misconduct, until their successors are qualified.

SEC. 12. If, from any cause, the officers shall not be elected at the time provided in the agreement or by-laws, such election may be made at such other time as the officers and directors may appoint. If such appointment be not made within three months, then at the call of any six stockholders.

If officers
qualify they
may continue
to act, etc.

SEC. 13. It shall be the duty of the corporation to keep true and correct books of its proceedings and business.

SEC. 14. The stock shall be deemed personal property, and may be transferred in such manner as may be provided in the agreement or by-laws.

SEC. 15. If the Secretary, Clerk, or other person having the charge of keeping the books of the corporation, or any other person whose duty it is to make entries in such books, shall wilfully omit to make the proper entries, or shall knowingly and wilfully make any false and fictitious entries therein, with intent to deceive or defraud the corporation or any stockholder, creditor or other person, he and his counselors, advisers, aiders and abettors shall be deemed guilty of forgery, and shall be punished as provided by law for the punishment of the crime of forgery.

Fraudulent
practices
punished.

SEC. 16. If any officer, director, employee or other person having the charge or management of any money or other property of the corporation, or to whom any such money or other property shall be entrusted for any purpose whatever, shall fraudulently misapply, carry away, secrete, conceal or convert to his own use any such money or other property with intent to defraud such corporation, or any stockholder, creditors or other person, he, his counselors, aiders and abettors

Same.

shall be deemed guilty of embezzlement, and shall be punished as provided by law for the punishment of embezzlement.

Certificate of Clerk.

SEC. 17. It shall be the duty of the Clerk, with whom the records in this Act mentioned are kept, at the request of any person interested therein, or who needs the same for evidence, on being paid his fees therefor, to give a transcript of such record under the seal of said Court, which transcript shall be conclusive evidence of such record, and *prima facie* evidence of the facts therein stated.

Non user.

SEC. 18. Non-use for two years of the franchise herein given, or non-compliance with any of the provisions of this Act, shall be a forfeiture of the privileges shall herein be granted.

Meetings, votes, etc.

SEC. 19. Whenever a meeting of the stockholders, other than stated meetings shall be necessary, notice shall be given in such manner as may be prescribed in the agreement or by-laws. At all meetings each shareholder shall be entitled to one vote for each share of stock which he or she may have in his or her own right, or any, held by him or her in trust for others, as administrator, executor or guardian, and such votes may be given in person or by an authorized agent or proxy.

Liability of Stockholders.

SEC. 20. If the agreement mentioned in Section Two of this Act provide that the individual property of the stockholders shall be liable for the corporate obligations, then such property shall be deemed and taken to be so liable; if it provide that such individual property shall not be liable, then it shall be deemed and taken to be not liable; provided that the joint property of the association and the unpaid stock shall be liable for the debts of the association.

Legislature may repeal, etc.

SEC. 21. The Governor and Legislative Assembly may hereafter, modify or repeal this Act: but if it be repealed, any corporation organized under this Act, may continue for the purposes mentioned in Section Eleven of this Act.

—o—

AN ACT

To amend "An Act Amendatory of and Supplementary to An Act entitled An Act establishing a Territorial Road from Great Salt Lake City, to Wanship, Summit County," Approved January 19, 1866, Approved January 21, 1868.

[Approved February 18, 1870.]

Amendment.

SEC. 1. *Be it enacted by the Governor and the Legislative Assembly of the Territory of Utah:* That the word fifty in the second line of the third section of an Act amendatory of and supplementary to an Act entitled an Act establish-

ing a Territorial Road from Great Salt Lake City to Wanship, Summit County, approved January 19, 1866, be amended to read twenty-five, that the word ten in the third line read five, that the word fifty in the fourth line read twenty-five, that the word twenty-five in the same line read fifteen.

SEC. 2. The Superintendent of said road is hereby authorized to suspend the collection of toll on either of the toll gates of said road when in his judgment it is deemed advisable and he is hereby authorized on the suspension of either of said gates to collect at the other, an amount equal to the amount that would be collected at both; and may remove said toll gates to any point on said road that shall best subserve the public interest.

—o—

TERRITORIAL APPROPRIATION BILL.

[Approved February 18, 1870.]

Be it enacted by the Governor and Legislative Assembly of the Territory of Utah: That there be paid out of any money in the Territorial Treasury, not otherwise appropriated, the following amounts, viz:

To Wm. Clayton, Auditor of Public Accounts, for services, 1869.....	\$ 600 00
For stationery, Auditor's Office.....	110 85
For postage.....	25 00
Amount paid to finish Auditor's desk, in excess of appropriation.....	70 00
Paid for blank warrants and receipt books.....	21 00
To Wm. Clayton, Recorder of Marks and Brands, for printing Brand Sheets.....	204 80
To the Warden of the Penitentiary, for services in the year 1869.....	1000 00
To defray expenses for the Penitentiary, during the year 1870.....	2000 00
To Robert L. Campbell, Territorial Superintendent of Common Schools, as compensation for services for the year 1869.....	600 00
Stationery, telegrams and postage.....	50 00
Printing for 1870.....	60 00
To Z. Snow, Deputy Attorney General, for services, office rent, incidentals for 1869.....	1000 00
To John F. Hardie, for services as Engrossing Clerk,	120 00
To Calder Bros., for stationery furnished to Third District Court.....	27 10

Sums
appropriated.

To W. W. Phelps, Superintendent Meteorological Observations, for services for 1869.....	\$ 200 00
To expenses for District Court including rent, board of prisoners, fees of Territorial Marshal, jurors, witnesses and incidental expenses for the year 1869, or so much thereof as may be necessary to be paid on orders of J. D. T. McAllister, Territorial Marshal, when his accounts are audited	4634 50
To a contingent fund, to be drawn by J. D. T. McAllister, Territorial Marshal, on vouchers to be approved by the Auditor of Public Accounts, or so much thereof as may be necessary.....	4000 00
For the relief of R. A. Allred, late Assessor of Tooele County.....	112 90
To reimburse E. Snow, for amount laid out on the roads in Washington and Kane Counties.....	657 04
For the relief of W. C. Mitchell, late Assessor of Iron County.....	100 00
For the relief of W. I. Appleby.....	22 00
To assist in building fort or forts to protect the settlers in Kane County from Navajoe Indians, to be expended under the direction of General E. Snow.....	1000 00
To expenses of Deseret University, in excess of appropriations, which have been drawn.....	498 49
To additional amounts paid by the Treasurer in '68, omitted in previous reports.....	414 50
To cost of loan of money for agent, which has been drawn.....	100 00
To refunded Z. Snow, for money paid by him to witnesses, as per vouchers.....	176 00
To paid witnesses summoned for U. S. Courts, on Territorial business.....	118 75
To be expended in opening a road from Meadow Valley to the Muddy.....	1000 00
To improve the road between St. George and the Muddy, to be expended under the direction of Jos. W. Young.....	500 00
For the relief of Thomas Snarr.....	300 00
For the relief of John Boyden, late Assessor of Morgan County.....	366 71
To be expended under the direction of the County Court of Rich County, for improving the road between St. Charles and Logan, being balance due from Rich County for Territorial tax for 1869, said Court to report to the Auditor of Public Accounts on or before the first day of December, 1870.....	328 19
For the relief of the Librarian.....	300 00
For a contingent fund, to be drawn by the Public Printer, if needed by him to carry into effect the provisions of the law of this the Nineteenth Session, requiring him to print and bind the	

Laws	\$2000 00
To Abinadi Pratt, Engrossing Clerk for the House..	120 00
To Elias Morris, Engrossing Clerk for the House...	50 00
To Thomas C. Callister, Engrossing Clerk	28 00
To John Sholderbrand, Engrossing Clerk	10 00
To Richard V. Morris, Engrossing Clerk	12 00
For extra engrossing, to be drawn by Mr. J. F. Smith	8 00
To improve the roads between Logan, Cache County, and St. Charles, Rich County	2208 50
For the relief of Patrick Lynch	419 50
For the relief of Adolphus Thompson, wounded during the Indian war in Sevier County, in 1868	100 00
The following sums to be drawn on the order of the Attorney General:	
To pay Stephen Taylor, Sheriff of Summit County, for various services and for serving subpoenas on witnesses before the Third District Court at its April and September terms	50 00
To pay Philander Cranney, Sheriff of Cache County, for arresting and bringing prisoners to the Third District Court	50 00
To pay witnesses summoned before the Third Dis- trict Court, in behalf of the Territory	267 50
For Aujutant General's office for rents, clerk's hire, and incidental expenses, on the order of Lieut. Gen. Daniel H. Wells	1500 00
To be expended for the Deseret University	2500 00
For the relief of Public Printer, in conformity with appropriation made Jan. 26, 1870, (included here to condense all other appropriations)	4850 00
To pay Christopher Merkley for helping to run the line between Utah and California	350 00

JOINT RESOLUTION.

[Approved January 21, 1870.]

President and
Directors of
U. C. R. R.
thanks to.

Be it resolved by the Governor and Legislative Assembly of the Territory of Utah: That we, the representatives of the people, in Legislative Assembly convened, do congratulate the President and Board of Directors of the Utah Central Railroad for the energy, perseverance and commendable efforts displayed in the completion of that grand enterprise in so short a time in this once isolated region; knowing, as we do, that such an enterprise cannot fail to greatly facilitate the development of the resources of our Territory, for which we tender to them our warmest thanks.

—o—

JOINT RESOLUTION

Of Respect to the Memory of His Excellency the late Charles Durkee, Governor of the Territory of Utah.

[Approved January 27, 1870.]

His excellency
Chas. Durkee,

It is with regret that we have received, through telegraphic dispatch, the intelligence of the sudden demise of His Excellency Charles Durkee, Governor of Utah Territory.

Prior to the date of his decease, he held many distinguished positions of trust under the Federal Government.

In 1837 and 1838 he served as a member of the Legislature of Wisconsin, and as Representative of that State in Congress in 1858 and 1859, and afterwards served as a member of the United States Senate for six years.

He was a Delegate also to the Peace Congress of 1861.

In 1865 he received his appointment as Governor of this Territory.

Our acquaintance with him during his official career as the Chief Executive of this Utah, enables us to say that in him we have recognized a gentleman of polished manners, refined feelings, broad views and high intellectual qualities, with a keen appreciation of the rights and liberties held dear by every loyal citizen.

Towards the General Government, as also in behalf of the general interest of the people of this Territory, he discharged the high functions of his office with honor and fidelity.

He was especially endeared to the members of the Legislative body for his affability, genial spirits and readiness to aid with his counsel and superior experience in facilitating Legislative business, and in maintaining a reciprocity of good feeling between the Executive and Legislative departments.

As a high-minded gentleman and an able statesman, we lament his loss, at the same time realizing that we can pay to his memory no higher tribute of respect than to cite his just and honorable course while amongst us, showing, as it does, an able administration unbiased by narrow prejudices and unsullied by party feeling, being alone sufficient to cause his memory to be regarded with the highest reverence and esteem.

We deeply sympathize with his family and friends in their bereavement, and beseech the Great Disposer of all human events to administer consolation to them, and to dispel the dark clouds of sorrow from their afflicted hearts.

—o—

JOINT RESOLUTION.

[Approved February 17, 1870.]

Be it resolved by the Governor and Legislative Assembly of the Territory of Utah: That the following sums be remitted to the several delinquent Assessors and Collectors, and that the Auditor be authorized to expunge said amounts from his books: Auditor authorized to expunge, etc.

Salt Lake County, to Robert T. Burton, for the years eighteen hundred and sixty-seven and eighteen hundred and sixty-eight, one thousand and seven dollars and thirty-four cents, (\$1007.34.) S. L. County.

Utah County, John B. Milner, for the year eighteen hundred and sixty-three, three hundred and fifteen dollars and sixty cents, (\$315.60.) Utah County.

Utah County, George W. Bean, for the year eighteen hundred and sixty-five, four hundred and ten dollars and fifty cents, (\$410.50.) Same.

Summit County, Charles E. Griffin, for the years eighteen hundred and sixty-one and eighteen hundred and sixty-two, one hundred dollars and twenty-two cents, (\$100.22.) Summit County.

Wasatch County, John Harvey, for eighteen hundred and sixty-two, eighty-six dollars and twenty-seven cents, (\$86.27.) Wasatch County.

Piute County, F. Collins and John Beal for the years eighteen hundred and sixty-five and eighteen hundred and sixty-six, three hundred and ten dollars and eighty-cents, (\$310.80.) Piute County,

Morgan
County.

Morgan County, John Boyden, for eighteen hundred and sixty-one, two, three and six, three hundred and sixty-six dollars, and eighty-one cents, (\$366.81.)

Washington
County.

Washington County, Rufus C. Allen, for eighteen hundred and fifty-six, seven dollars and sixty-two cents, (\$7.62.)

—o—

MEMORIAL.

To the Honorable the Senate and House of Representatives of the United States in Congress Assembled:

Biennial
Sessions.

Gentlemen:—Your Memorialists, the Governor and Legislative Assembly of the Territory of Utah, beg leave to call your attention to the fact that the law of Congress requiring Territorial Legislatures to pass laws, preparatory to holding Biennial Sessions was passed March third, eighteen hundred and sixty-nine, after the close of our last Session.

We therefore respectfully ask that an appropriation be made by Congress to defray the expenses of the present Legislature. And your memorialists as in duty bound, will ever pray.

GEORGE A. SMITH,
PRESIDENT OF THE COUNCIL.

. ORSON PRATT,
SPEAKER OF THE HOUSE OF REPRESENTATIVES.

S. A. MANN,
ACTING GOVERNOR.

—o—

MEMORIAL

To Congress asking for further Congressional action pertaining to School Lands.

[Approved February 14, 1870.]

To the Honorable, the Senate and House of Representatives of the United States in Congress assembled:

Gentlemen:—Your Memorialists, the Governor and Legislative Assembly of the Territory of Utah, respectfully represent that whereas, in Section Fifteen of the Organic Act of Utah Territory, it is enacted: "That when the lands in said Territory shall be surveyed under the direction of the Government of the United States, preparatory to bringing the same into market, sections numbering sixteen and thirty-six in each township in said Territory, shall be and the same are hereby reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be erected out of the same."

On Sept. 27th, 1868, the Superintendent of Schools for this Territory wrote to Jos. S. Wilson, Commissioner Land Office at Washington, asking that gentleman to use his influence to procure for Utah all the advantages accruing through the liberal grants of Government. To this communication the Commissioner replied as follows:

"Sir:—In reply to your letter of the 27th ult., I have the honor to state that sections sixteen and thirty-six are reserved for schools in Utah Territory, but title thereto cannot be acquired until further legislation by Congress, making the 'grant in place,' which is not usually done until the community passes from a Territorial condition to a State."

Your Memorialists, therefore, respectfully petition that such legislation may be had by your honorable body as will place this land in such position as to be made available for the object for which it was evidently intended by Congress; and your petitioners, as in duty bound, will ever pray.

GEORGE A. SMITH,
PRESIDENT OF THE COUNCIL.

ORSON PRATT,
SPEAKER OF THE HOUSE OF REPRESENTATIVES.

S. A. MANN,
ACTING GOVERNOR.

MEMORIAL

To Congress, Praying that the net proceeds of Internal Revenue be set aside for the erection of a Penitentiary.

[Approved February 14, 1870.]

To the Honorable the Senate and House of Representatives of the United States, in Congress Assembled:

Your Memorialists, the Governor and Legislative Assembly of the Territory of Utah, respectfully represent that our Territorial Penitentiary is sadly out of repair, and in such a general state of dilapidation as to render it unsuitable as well as unsafe for the confinement of criminals, and in view of its having been designated by the Secretary of War as the place of confinement for military prisoners in this Territory, as also the demand for an enlarged, more healthy, and secure prison, consequent upon our continually increasing population, as well as an increased influx of drifting immigration into our settlements; now that the "Great Highway," running through our Territory, is completed, we therefore most respectfully pray that the net proceeds of the Internal Revenue of this Territory be set aside for the erection of a Penitentiary, in the

same manner as provided in "An Act setting aside proceeds from Internal Revenue for the erection of Penitentiaries in the Territories of Nebraska, Washington, Colorado, Idaho, Arizona, and Dacota," approved January twenty-two, eighteen hundred and seventy.

Your favorable consideration of this subject is respectfully desired, and your memorialists, as in duty bound, will ever pray.

GEORGE. A. SMITH,
PRESIDENT OF THE COUNCIL.

ORSON PRATT,
SPEAKER OF THE HOUSE OF REPRESENTATIVES.

S. A. MANN,
ACTING GOVERNOR.

—o—

MEMORIAL

To Congress for Annual Sessions of the Legislative Assembly of the Territory of Utah.

[Approved February 15, 1870.]

To the Honorable the Senate and House of Representatives of the United States in Congress Assembled:

Gentlemen:—Your Memorialists, the Governor and Legislative Assembly of the Territory of Utah, would respectfully ask your honorable body to provide by law for Annual Sessions of the Legislative Assembly of Utah Territory. Your memorialists here adopt the language of His Excellency S. A. Mann, Acting-Governor of the Territory in his Message to the Legislative Assembly of January eleventh, eighteen hundred and seventy.

"I would recommend you to memorialize Congress for Annual Sessions of the Legislature, believing that the development and progress of the Territory in opening new fields of industry will demand your fostering and continued care," and your Memorialists, as in duty bound, will ever pray.

GEORGE A. SMITH,
PRESIDENT OF THE COUNCIL.

ORSON PRATT,
SPEAKER OF THE HOUSE OF REPRESENTATIVES.

S. A. MANN,
ACTING GOVERNOR.

12323 8624

roce
s in
Ariz
und

ectfi
ill e

DUNC

ATIL

Ass:

ives

Le
tfti
srior
emor
Man
Legi
t ad

ss f
relu
ds
' ad

NEL

IVE

7

